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Map

SUPREME COURT OF THE UNITED STATES.

No. ~~287.~~ ~~178.~~ 114.

THE UNITED STATES, APPELLANTS,

VS.

JOSÉ LORETO SEPULVEDA ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

GOVERNMENT PRINTING OFFICE.

SUPREME COURT OF THE UNITED STATES.

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4 *Office of the board of commissioners to ascertain and settle the private land claims in the State of California.*

Be it remembered, that on this first day of November, anno Domini one thousand eight hundred and fifty-two, before the commissioners to ascertain and settle the private land claims in the State of California, sitting as a board in the city of San Francisco, in the State aforesaid, in the United States of America, the following proceedings were had, to wit:

The petition of José Loreto Sepulveda *et al.*, for the place named "Los Palos Verdes," was presented, and ordered to be filed and docketed with No. 446, and is as follows, to wit:

(*Vide* page 3 of this transcript.)

Upon which petition the following subsequent proceedings were had in their chronological order, to wit:

LOS ANGELES, *November* 9, 1852.

In case No. 446, José Loreto Sepulveda, for the place named "Los Palos Verdes," the deposition of Abel Stearns, a witness on behalf of the claimants, taken before Commissioner Hillard Hall, with documents marked H. H. No. 1, and translation thereof marked D, annexed thereto, was filed.

(*Vide* page 4 of this transcript.)

SAN FRANCISCO, *December* 13, 1852.

5 In the same case, the deposition of Leonardo Cota, a witness on behalf of the claimants, taken before Commissioner Hillard Hall, was filed.

(*Vide* page 6 of this transcript.)

SAN FRANCISCO, *August* 17, 1853.

Case No. 466, called. The counsel for the claimants read the evidence. Argued, submitted, and taken under advisement by the board.

SAN FRANCISCO, *December* 20, 1853.

In the same case, Commissioner Thompson Campbell delivers the opinion of the board confirming the claim.

(*Vide* page 29 of this transcript.)

Petition.

To the honorable board of United States land commissioners, appointed to settle private land claims in California.

The petition of José Loreto Sepulveda and Juan Sepulveda respectfully represents:

That on or about the third day of June, A. D. 1 46, Pio Pico, then

governor of California, in the name of the Mexican nation, by virtue of the powers and authority in him vested, the laws then in force, the customs and usages of the country affecting grants of land in California, granted in full property unto your petitioners the tract of land and rancho situated in the present county of Los Angeles, known
6 by the name of Los Palos Verdes, containing about — square leagues, more particularly described in the papers and maps relating to said grant of land, in the archives in custody of the United States surveyor general for California, and in the possession of your petitioners, ready to be produced and proved before your honorable board.

That copies of some portions of the papers found on the archives, as well as original papers in possession of your petitioners, are herewith filed as part of this petition.

And your petitioners further show, that they received juridical possession of said tract of land and rancho from the proper officer having jurisdiction of such matters, as appears by original papers, documents, and maps in possession of your petitioners, and ready to be produced and proved before your honorable board. That copies of the said papers and documents are herewith filed as part of this petition.

And your petitioners further show, that a tract of land at the landing of San Pedro, five hundred varas in extent each way, has been and is reserved from this claim, according to the true intent and meaning of the provisions of said grant.

And your petitioners further show, that they have been in peaceable and quiet possession of said land and rancho for more than nineteen years prior to the date of said grant, under authority of the Mexican government; and your petitioners are at the present time in the peaceable and quiet possession of said lands, occupying the same with their houses and corrals and their horses and cattle.

There is no conflicting claim to said rancho of any just
7 validity known to your petitioners. That said lands have not been surveyed by the United States surveyor general for California.

The evidence upon which your petitioners rely consists of the records of this grant, papers and maps in the archives now in the office and custody of the U. S. surveyor general for California, original documents, papers, and maps in the possession of your petitioners, and the testimony of witnesses to be produced before your hon. board.

Respectfully submitted for such action as the justice and nature of the claim may require.

E. O. CROSBY,
Of Counsel for Claimants.

Filed in office Nov. 1st, 1852.

GEO. FISHER, *Sec'y.*

Deposition of Abel Stearns.

LOS ANGELES, *Nov. 9th*, 1852.

On this day, before Commissioner H. Hall, came Abel Stearns, a witness in behalf of the claimants, José L. Sepulveda *et al.*, petition No. 446, and was duly sworn, his evidence being given in English.

The U. S. associate law agent was present.

In answer to questions by counsel for the claimants the witness testified as follows:

My name is Abel Stearns; my age is fifty-four years; and I reside in the city of Los Angeles; I have resided in California over twenty-three years.

8 I am acquainted with the handwriting of Pio Pico, José Maria Moreno, Leonardo Cota, Ignacio Coronel, and Bacildo Valdez.

A paper, now shown me, purporting to be a grant to José Loreto and Juan Sepulveda, dated the 3d day of June, 1846, to which is attached a testimonial of juridical possession given in June, 1846. The signatures of the said several persons appearing on said paper I believe to be genuine. Said Cota was acting alcalde at the time of the giving of said possession, and authorized to give it. Said paper is hereto annexed, and marked H. H. No. 1.

I am acquainted with the place called Palos Verdes. It is situated on the sea-coast near San Pedro. The land has been occupied by the family of the Sepulvedas for more than twenty years. In 1846, when the grant was made, Juan Sepulveda and José L. Sepulveda had houses on the land, in which they resided separately with their families, and they have continued to reside there until the present time. They used the land for the pasturage of cattle and other stock, and have stock there now.

ABEL STEARNS.

Sworn and subscribed before me.

HILLAUD HALL, *Com'r.*

Filed in office Nov. 9th, 1852.

GEO. FISHER, *Sec'y.*

9 *Deposition of Leonardo Cota.*

Los Angeles, *Nov. 20th*, 1852.

On this day, before Com'r Hilaud Hall, came Leandro Cota, a witness on behalf of the claimants, José Loreto Sepulveda, petition No. 446, and was duly sworn, his evidence being interpreted by the secretary.

The U. S. associate law agent was present.

In answer to questions by counsel for the claimants the witness testified as follows:

My name is Leonardo Cota; my age is thirty-four years; and I reside in the county of Los Angeles.

In June and July, 1846, I was regidor and acting alcalde in this place. I know the Rancho Palos Verdes. It is situated in this county, adjoining the port of San Pedro. As alcalde I gave juridical possession to José Loreto Sepulveda and Juan Sepulveda in June or July of that year, and I believe in July, to said rancho. The boundaries were marked out and the landmarks set up at the time. I

governor of California, in the name of the Mexican nation, by virtue of the powers and authority in him vested, the laws then in force, the customs and usages of the country affecting grants of land in California, granted in full property unto your petitioners the tract of land and rancho situated in the present county of Los Angeles, known
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There is no conflicting claim to said rancho of any just
7 validity known to your petitioners. That said lands have not been surveyed by the United States surveyor general for California.

The evidence upon which your petitioners rely consists of the records of this grant, papers and maps in the archives now in the office and custody of the U. S. surveyor general for California, original documents, papers, and maps in the possession of your petitioners, and the testimony of witnesses to be produced before your hon. board.

Respectfully submitted for such action as the justice and nature of the claim may require.

E. O. CROSBY,
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Filed in office Nov. 1st, 1852.

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ABEL STEARNS.

Sworn and subscribed before me.

HILLAUD HALL, *Com'r.*

Filed in office Nov. 9th, 1852.

GEO. FISHER, *Sec'y.*

9 *Deposition of Leonardo Cota.*

LOS ANGELES, *Nov.* 20*th*, 1852.

On this day, before Com'r Hilaud Hall, came Leandro Cota, a witness on behalf of the claimants, José Loreto Sepulveda, petition No. 446, and was duly sworn, his evidence being interpreted by the secretary.

The U. S. associate law agent was present.

In answer to questions by counsel for the claimants the witness testified as follows:

My name is Leonardo Cota; my age is thirty-four years; and I reside in the county of Los Angeles.

In June and July, 1846, I was regidor and acting alcalde in this place. I know the Rancho Palos Verdes. It is situated in this county, adjoining the port of San Pedro. As alcalde I gave juridical possession to José Loreto Sepulveda and Juan Sepulveda in June or July of that year, and I believe in July, to said rancho. The boundaries were marked out and the landmarks set up at the time. I gave them a certified copy of the proceedings. They had been occupying the land for many years previous to that time, and they have been occupying it ever since, and now occupy it.

LEONARDO COTA.

Sworn and subscribed before me.

HILAUD HALL, *Com'r.*

Filed in office Dec. 13th, 1852.

GEO. FISHER, *Sec'y.*

10 *Expediente.*

1846.

Expediente promovid, por los Señores José Loreto y Juan Sepulveda en pretencion del parage conovido con el nombre de los Palos Verdes, en la jurisdiccion de esta ciudad.

No. 565.

Exmo Sr: José Loreto y Juan Sepulveda, Mejicanos por nacieniento y vecinos de esta ante, V. E. en la mas bastante forma y coma mas haya lugas en derecho comparisimos y decimos; que hase como, diez y nueve anos que se nos concedio probicionalmente el paraje de los palos Verdes hacia el embarcadero cuya concesion la manifiestan los adjuntos documentos que en catorce jojos car el diseño premstamos y desde era epoca humos tinido cubierto el sitio con ganado y caballada suficiente igualmente humos construido fincas valiorces y le humos dado ser á un terreno absolutamente valdio reconovendonos por tal motiva y el acto ratificado del Ser Gral, Don José Figueroa, como unos propietanos y descansabamos de bruna fe un era creencia peso el aspirantimo de muchos en el logro del terreno y los preparativos de otros para danaslos hace dispertado nuestra confianza y nos hace unpelido a pedir a V. E. la revalidacion del titulo provicional
11 en titulo de propiedad y que los demarquen el terreno y estencion con arreglo á lo que posemas con eso ceraran las pretenciones injustas nuestra propiedad se aregurara y lograranos la atencion del derecho de preferencia que terrenos. Por tanto A. V. E. suplicamos que en virtud de lo espuesto y por el merito de las raranos alegados, decreto de concedido en la que recibiremos gracia jurando no ser de malicia y lo necesario, &c.

Admitiendo la presente en papel comun por falta del sellado.

JOSÉ L. SEPULVEDA.
JUAN SEPULVEDA.

Angeles *y Mayo* 29 *de* 1846.

Angeles *Junio* 3 *de* 1846.

Vista la solicitud con que da principio esta espediente cerciorado que todo cuanto suplicantes alegan esta fundado en la justicia y en vista de los documentos que hace hecho valor con todo lo demas que se terre-presente y ver convino mando de las facultades con que me hallo

autorizado á nombre de la Nacion Mejicana y de conformidad con la
ley de 18 de Agosto de 1824 y reglamento de 21 de Noviembre de
1828 declaro por las presentes lebras á los Señores José Loreto y
Juan Sepulveda hemeanos dumos en propiedad del parage conovido
con el nombre de los palos Verdes librese á los interesados el titulo
respectivo y reservese el espediente para some todo á la Exma.
12 Asamblea Departmental. Pio Pico, Gobernador Constitucional del Departmento del Californias asi lo mando decreto
y firmo doy fel.

PIO PICO.

José Matias Moreno, *Scrio Yn'to.*

Pio Pico, Gobernador Constitucional del Departmento de Californias:

Por cuanto los Ciudadanos Joseé Loreto y Juan Sepulveda, hermanos hace pretendido para su beneficio personal y el de sur familias el terreno conovido con el nombre de los Palos Verdes que provicionalmente hace poseido por concesion hecha del gobierno de este pais hace diez y nuebe anos practicados previamentes las averiguaciones concerneintes usando de las facultades con que une hallo autorizado a nombre de la Nacion Mejicana he venido por decreto de este dia en concederles el mencionado terreno, declarrandoles la propiedad el por las presentes letras de conformidad con la ley de 18 de Agosto de 1824 y reglamento de 21 de Noviembre de 1828 a reserva de la aprovacion de la Exma Asamblea Departamental y bajo las condiciones siguientes.

1st. Podran cercarlo sin perjudicar las travenias caminos y servidumbres, la disfrutaran libre y esclusivamente destinandolo al uso y aprovechamiento que mas los convenga.

2d. Solicitaran del Juez respectivo los de la posecion juridica en virtud de este despacho por el cual se demarcaran los linderos con las respectivas mojoneras.

3d. El terreno de que se les hace donacion es el que demuestra el diseño que obra en es espediente el Juez que diere la posesion la hará medir conforme á ordinanza y dará cuenta a este gobierno del numero de sitios de ganado mayor que contieue.

4th. Dejaran libre en la playa de San Pedro quinientas varas á cada viento de los cuartro cardinales para que pendan fabricar casa las personas a queines se los conceda permiso, asi como no podran impedir el mo de las aguas y pasturas a la personas que trafican con bueyes carretas caballada y demas con el puerto de San Pedro.

En consecuencia mando que teniendose el presente titulo por firme y valedero se tome razon de el en el libro á que corresponde y se entregue a los interesado para su resguardo y demas fines.

Dado en papel comun por no haber sellado en la ciudad del los Angelos a los tres dias del mes de Junio de 1846.

PIO PICO.
J. M. M.,
S. Y.

Pico Pico Gobernador Constitucional del Departamento de
[L. S.] Californias.

Por cuanto los Ciudadanos Jose Loreto y Juan Sepulveda hermanos hace pretendido para su beneficio personal y el de sus familias el terreno conovido con el nombre de los Palos Verdes que provincionalmente
hace porvido por concesion hecha del Gobierno de este pais hace
14 diez y nuebe años practicadas previamente los averiguaciones consemientos mando de las facultades con que me hallo autorizado à nombre de la Nacion Mejicana he venido por decreto de este dia en concederles el mencionado terreno declarandolas la propiedad de el por las presentes libras de conformidad con la ley de 18 de Agosto de 1824 y reglamento de 21 de Noviembre de 1828 à reserva de la aprovacion de la Exma Asamblea Departamental y bajo las condiciones siguientes.

1ª. Podran cercarlo seis perjudicar las travesias caminos y servidumbres lo disfrutaran libra y esclusivamente destinandolo al uso y aprovechamiento que mas les convenga.

2ª. Solicitaran del Juez respectivo les de la posecion juridica en virtud de este despacho por el cual se demarcaran los linderos con las respectivas mojoneras.

3ª. El terreno de que se los hace donacion es el que demuestra el deseño que obra en el espediente. El Juez que dierre la posecion la hará medir conforme à ordenanza y dará cuenta à este Gobierno del numero de sitios de ganado mayor que contiene.

4ª. Dejaran libra en la playa de San Pedro quinientas varas à cada viento de los cuatro cardinales asi como no podran impedir el uso de las aguas y pasturas a las personas que trafican al puerto de San Pedro.

En consequencia mando que tensindose el presente titulo por firme
y valedero se tomo razon de el en el libra à que corresponde y
15 se entregua á los interesados para su resguardo y demas fines.

Dado en papel comun por no haber sellado en el ciudad de los Angeles á los tres dias del mes de Junio de mil ochociento cuarenta y seis.

Queda tomada razon de este superior despacho en el libra respectivo.

PIO PICO.

Office of the surveyor general of the United States for California.

I, Samuel D. King, surveyor general of the United States for the State of California, and as such now having in my office, and under my charge and control, a portion of the archives of the former Spanish and Mexican territory or department of Upper California, do hereby certify that the nine preceding and hereunto annexed pages of tracing paper, numbered from one to nine inclusive, and each of which is verified by my initials, (S. D. K.,) exhibit a true and accurate copy of certain documents on file and forming part of the said archives of this office.

In testimony whereof, I have hereunto signed my name officially
[L. S.] and affixed my private seal, (not having the seal of office,) at the city of San Francisco, California, this 16th day of October, 1852.

SAMUEL D. KING,
Sur. Gen'l Cal.

16 Filed in office November 1, 1852.

GEO. FISHER, *Sec'y.*

Exhibit B.

[Translation.]

Your Excellency: We, José Loreto and Juan Sepulveda, Mexicans by birth and residents of this place, before your excellency, in the most sufficient form and to the utmost intent of the law, do appear and say, that it is about nineteen years since the tract of Palos Verdes towards the Embarcadero was granted to us provisionally. This grant is proven by the subjoined documents, which we present in fourteen sheets, together with the plan, and since that period we have the premises stocked with cattle and horses in sufficient number. We have likewise constructed valuable improvements, and have given life to a tract absolutely deserted. Wherefore, and under the deed ratified by General Don José Figueroa, we considered ourselves as proprietors and reposed in good faith in that belief; but the pretentions of many persons towards the enjoyment of the premises, and the preparations made by others to prejudice them, have awakened us from our confidence and induced us to pray your excellency to resanction the provisional title in a title of ownership, and that the size and extension be assigned according to what we possess, and therewith unjust pretensions will cease, our property will be secured, and we shall obtain attention to the right of preference which is ours.

17 Wherefore we beseech your excellency, by virtue of the aforesaid, and the merit of the causes alleged, to give us a decree of concession wherein we shall receive favor. We make oath that we do not proceed through malice, and add the necessary verifications, and praying that these presents be admitted on common paper, there being none stamped.

Angeles, *May* 29, 1846.

JOSE L. SEPULVEDA.
JUAN SEPULVEDA.

Angeles, *June* 3, 1846.

In view of the petition wherewith these proceedings originate, proof having been taken that all the matters alleged by the petitioners are founded in justice, and in view of the documents whereof they have availed themselves, together with all other things which were brought forward, and it was behooving to keep in view, in the exercise of the powers wherewith I am invested, in the name of the Mexican nation, and in conformity with the law of the 18th of August, 1824, and the regulation of 21st of November, 1828, I declare by these present letters the Señores José Loreto and Juan Sepulveda, brothers, owners in absolute property of the tract known by the name of Los Palos Verdes, let the appropriate title be issued to the parties in interest, and let the minutes of these proceedings be kept to be submitted to the approval of the most excellent the departmental assembly.

Pio Pico, constitutional governor of the department of Californias, has so ordered, decreed, and subscribed.

18 Witness my hand.

PIO PICO.

José Matias Moreno,
Secretary ad interim.

Filed in office November 1, 1852.

GEO. FISHER, *Sec'y.*

Posecion de los Palos Verdes, *Año de* 1846.

Pio Pico, gobernador constitucional del departamento de las Californias:

Por cuanto los Ciudadanos José Loreto y Juan Sepulveda, hermanos
hace pretendido para su beneficio personal y el de sus familias el
19 terreno conocido con el nombre de los Palos Verdes, que provicion-
almente hace poceido por concesion hecha del gobierno de este
pais hace diez y nueve años; practicados previamente las averiguaciones consermintos mando de los facultades que me son conferidas á nombre de la Nacion Mejicana, he venido por decreto de este dia en consederles el mencionado terreno declarandoles la propiedad de el por las presentes letras de conformidad con la ley de 18 de Agosto 1824 y reglamento de 21 de Noviembre de 1828, á reserva de la aprobacion de la Exma Asamblea Departamental bajo y los condiciones siguientes:

1ª Podran cercarlo sin perjudicar las travesias caminos y servidumbres la disfrutaran libre y esclusivamente distinandolo al usa y aprovechamiento que mas las convenga.

2d. Solicitara del Juez respectivo les de la posecion juridica en virtud de este despacho, por el cual se demarcaran los linderos con las respectivas mojoneras.

3d. El terreno de que se hace donacion es el que demuestra el diseño que obra en el espediente.

El Juez que diere la posecion lo hara medio confirme á ordenanza y dara cuenta a este gobierno del numero de sitios de ganado mayor que contiene.

4ª. Dejaran libres en la playa de San Pedro, quinientas varas á cador viento de los cuartro cardinales, asi como no podran impedio a las personas que trafican el Puerto de San Pedro.

En consecuencia nando que teniendose el presente titulo por
20 firme y valedero se tomo razon de el en el libro a que corres-
ponde y se entregue a los interesados para su resguardo y de
mas fines. Dado en papel comun por no haber sellado Ciudad de los Angeles, a los tres dias del mes de Junio de mil ochocientos cuarenta y seis.

PIO PICO.
JOSE MARIA MORENO,
Srio Ynto.

Quida tomada razon este superior despacho en el libro respectivo.

MORENO.

En la ciudad de los Angeles del Departamento de California a los once dias del mes de Junio de mil ochocientos cuarenta y seis. Yo Leonardo Cota Alcalde primero interim y Regidor de cano del Ylustra Ayuntamiento de este ciudad, deji: que por cuanto hace solicitudo los Señores Don Jose Loreto y Don Juan Sepulveda que se los de posecion Juridica del terreno conocido con el nombre de los Palos Verdes, del cual presentaron el titulo de propiedad respectivo parese por mi y testigos de asistencia y dueb la posecion juridica que solicita con arreglo al precitado despacho que espidio el Exmo Sen Gobernardo con fecha tres del presente. Asi lo decreté mandé y fumé con los
21 de asistencia segun derecho en este papel comun por falta del sellado. Leonardo Cota—Asistencia, Ygnacio Coronel—asistencia, Basilio Valdez.

En seguida yo el Juez que subscribe pasé oficio al colindante manifestandole que iba a remedir el parage de los Palos Verdes y que iba a ponor en posecion de el á los Senores Don Jose Loreto y Don Juan Sepulveda.

Y no habiendo manifestado ecepion alguna se pone por diligencia que autorizé y firmé con los asistencia segun derecho. Leonardo Cota—asistencia Ygnacio Coronel—asistencia Basilio Valdez. Acto continuo para la practica de estes diligencias nombre dos oficiales cordeleros los que por no saber escribir se omiten sus nombres y a los mismos que los hize saber el acto de su nombramiento respondecudo que entendidos lo oras y aceptaban bajo de juramento, promitiendo desempeñar fiel y legalmente su encargo esto contestaron y no firmaron por no sabet, y lo hize yo con de asistencia segun derecho. Leonardo Cota—asistencia Ygnacio Coronel—asistencia Basilio Valdez. Yncontenente y hallandome en el sitio de los Palos Verdes por ante mélos testigos de asistencia y los oficiales cordeleros mandé nudir un cordel constante de cien varas al que se ataron á sus estremos unos sancos de madera; y previa observacion y calculo por mis disposicion setiro el corde con direccion al poniente y se midieron y contaron dos mil varas, que remataron en unos meganos á orilla de la playa donde se mandó poner una mojonera, de este punto continuo la segunda medida con
22 direccion al Serr y se midieron cinco mil tres ceintas varas que remataron en la playa en un paraje nombrado el Codo; de este lugar y con direccion al oriente setiro la torcer medida respetando quinientas varas que se dejaron por cada uno de los cuatro veintos cardinales para los mas del Superior Gobierno; y continuando la medida hasta el paraje nombrado La Goleta salieron por roneltado quince mil varas que remataron en ese mismo paraje donde se ordenó que pongan un mojonera, de este lugar y con direccion al norte se tiro la cuarto medida y se contaron ocho mil varas, que remataron donde se comenzo. En tat estado y concluida la remedida del terreno les di á los interesados posesion juridica á nombre de la nacion Mejicana y dandose por satisfechos de todo lo actuado lo mando poner por diligencia que autorizo y firme con los de asistencia segun derecho. LeonardoCota—asistencia Ygnacio Coronel—asistencia Basilio Valdez.

Habiendose concluido las presentes diligencias desele testimonio a las partes para los mas que le convengan, asi yo el juez que subscribe

decreté mandé y firme con los de asistencia segun derecho. Leonardo Cota—asistencia Basilio Valdez.

En la fecha se dio el testimonio respectivo y se anota para constancia publica-rubrica-entre reglories-tres con las-ana-v^s-tachado-continuono v^l.

23 Concuerda con la original que se halla en el portocolo respectivo del que se sacó corrigió y confrontó fiel y legalmente en estas tres fojas del papel comun por falta de sellado, advistiendo que con el titulo original que va a la cabeza forman cinco fojas-fecha ut supra.

LEONARDO COTA.

Assa:
BACILIO VALDES.
YGNACIO CORONEL.

Filed in office November 9, 1852.

GEORGE FISHER, *Secretary*.

Pio Pico, constitutional governor of the department of the Californias:

[L. S.] Whereas the citizens, José Loreto and Juan Sepulveda, brothers, have claimed further personal benefits and that of their families, the tract known by the name of Palos Verdes, which they have possessed provisionally under grant made by the government of this country nineteen years ago, the investigations in that behalf having first been taken: In the exercise of the powers wherewith I am invested, in the name of the Mexican nation, I do now, by decree of this day, grant unto them the aforesaid tract, declaring unto them the aforesaid tract, declaring unto them the ownership thereof by the present letters, in conformity with the law of 18th of August, 1824, and the regulations of 21st of November, 1828, 24 under reservation of the approval of the departmental assembly, and under the following conditions:

1. They may enclose it without prejudicing the cross roads, highways, and rights of way; they shall enjoy it freely and exclusively, devoting it to the use and improvement which best may behoove them.
2. They shall request the competent magistrate to give them juridical possession by virtue of this patent; such magistrate shall assign the proper landmarks.
3. The land hereby granted is that known by the plan filed with the minutes of the proceeding. The judge who gives the possession will cause it to be measured conformably to ordinance, and shall report to the government the number of ranges (sitios) for neat cattle which it contains.
4. They shall leave free on the beach of San Pedro five hundred varas in each direction of the four cardinal points. Neither shall they have powers to prevent the persons who traffic at the port of San Pedro from using water and pasturage.

In consequence, I order that the present title being held as firm and valid, be entered of record in the appropriate book and delivered to the parties in interest for their protection and further ends. Given on common paper, there being none stamped, on the third day of the month of June, one thousand eight hundred and forty-six.

PIO PICO.

José Matias Moreno, *Secretary ad interim.*

25 This superior patent is entered of record in the appropriate book.

MORENO.

At the city of Los Angeles, in the department of California, on the 11th day of the month of June, one thousand eight hundred and forty-six, I, Leonardo Cota, first alcalde *ad interim* and senior member of the illustrious municipal council of this city, made the following order: Whereas the Señores Don José Loreto and Don Juan Sepulveda have requested that juridical possession be given them of the tract known by the name of Los Palos Verdes, whereof they presented the due title of ownership, ordered that I and the attesting witnesses repair and deliver the juridical possession which they solicit, agreeably to the aforementioned patent which his excellency the governor issued, dated the third instant. So decreed, ordered, and signed by me, with the attesting witnesses, according to law, on this common paper, there being none stamped.

LEONARDO COTA.

Attest:
Ignacio Coronel.
Basilio Valdez.

Next afterwards, I, the undersigned judge, sent notice to the owner of neighboring lands informing him that I was going to remeasure the tract of Los Palos Verdes, and was going to place in possession of the same the Señores Don José Loreto and Don Juan Sepulveda, and he not having shown any exception, the same is noted in the minutes which I certified and subscribed, with the attesting witnesses, according to law. 26

LEONARDO COTA.

Attest:
Ignacio Coronel,
Basilio Valdez.

Immediately afterwards, and for the practical part of these proceedings, I appointed two official line bearers, whose names are omitted, they not knowing how to write. I informed them of the act of their appointment, they answering that they had heard and understood it, and accepted under oath, promising to discharge their office faithfully and legally. This was their answer, which they did not sign, not knowing how to write, and I subscribed the same with the attesting witnesses according to law.

LEONARDO COTA.

Attest:
Ignacio Coronel.
Basilio Valdez.

Immediately afterwards, I being at the premises of Los Palos Verdes, and having in my presence the attesting witnesses and official line bearers, I caused to be measured a line one hundred varas in length; there were fastened wooden poles at its extremities, and after observation and calculation, the line was drawn under my directions on a westerly course, and there were measured and counted twelve thousand varas, which ended at some sand hills on the edge of the beach, where a landmark was ordered to be placed. From this point, the second measurement proceeded towards the south, and there were measured and counted five thousand three hundred varas, which
27 terminated on the beach at a place called El Codo. From this place, and on an easterly course, the third measurement was run, leaving a reserve of five hundred varas on each one of the four cardinal points for the uses of the superior government; and the measurement continuing to the place called the La Goleta, the result was fifteen thousand varas, which ended at said spot, where a landmark was ordered to be placed. From this spot, in a northerly direction, the fourth measurement was run, and there were counted eight thousand varas, which ended at the place of beginning. In this state of things, and the measurement of the tract being ended, I gave judicial possession to the parties interested, in the name of the Mexican nation; and they expressing themselves satisfied with all the proceedings, I ordered the same to be entered in the minutes, which I certify and subscribe with the attesting witnesses according to law.

LEONARDO COTA.

Attest:
Ignacio Coronel.
Basilio Valdez.

The present proceedings being concluded, let certificate be given to the parties for their behooving uses. I, the undersigned judge, have so decreed, ordered, and subscribed, with the attesting witnesses, according to law.

LEONARDO COTA.

Attest:
Basilio Valdez.

28 On the date the due certificate was given, a note of the same is taken for evidence.

A scroll.

Interlined the word *tres con las ussa*, in. Effaced *continuo*, out.

A true copy of the original, which is on file in the proper record, and from which it was taken, with faithful and lawful correction and collation, on these three sheets of common paper, for want of the stamped. Notice that with the original title at the head, there are five sheets, same date.

LEONARDO COTA.

Attest:
Ig'o Coronel.
Basilio Valdez.

Filed in office November 1, 1852.

GEORGE FISHER,
Secretary.

Opinion of board.

JOSÉ LORETO SEPULVEDA and JUAN SEPULVEDA *vs.* The UNITED STATES. } "Palos Verdes."

The papers on file in this case show that on the 3d day of June, A. D. 1846, the petitioners obtained from Governor Pio Pico a grant of land for the place called Palos Verdes; that on the 11th day
29 of June, A. D. 1846, judicial possession of said premises was given to to the parties interested. The grant and record of judicial measurement and possession are all satisfactorily proved and authenticated.

The petitioners have proved, by the testimony of witnesses, whose depositions are on file, that the land claimed has been occupied by the family of the Sepulvedas for more than twenty years, and that in the year 1846, when they obtained their grant, Juan Sepulveda and José L. Sepulveda had houses on the land, in which they lived with their families, and that they have continued to reside their ever since.

There is no proof that any approval of the departmental assembly was ever given.

It appears, from an examination of the papers in this case, that the petitioners had obtained a "provisional" grant from the government some nineteen years before they applied to Governor Pico for the present grant. This fact the governor recites in his deed of grant.

The grant contains no description of the land granted, except that it is granted by name, without regard to quantity. The parties, at the date of their last grant, were in possession of the premises, which they had been holding for nearly twenty years under a provisional grant; this may account for the absence of all description of the premises, and although it is expressly stated that it is made in conformity with the law of the 18th of August, 1824, and the regulations of the 21st November, 1828, the actual occupation of the parties, at the time grant was made, and the fact having been made to appear to the granting power that they had possessed and occupied
30 the land long previous to that time, by authority of the government, the usual formality in regard to description, as well as the condition that a house should be built within a prescribed period of time, seem to have been omitted, and, as I think, very properly.

The third condition of the grant designates the land as follows: "The tract hereby granted is that shown by the plan filed with the minutes of proceedings," and then proceeds to enjoin the judge who may give the possession to report the number of leagues the tract may contain to the government. The plan here referred to is not to be found with the other papers in the cause. The juridical measurement was made as required; not, however, with that distinctness and certainty that would perhaps be sufficient to identify an unoccupied tract of land. The map referred to is most likely in the archives in the United States surveyor general's office, and if it could be found, I have no doubt would greatly aid the officer in making his survey.

Taking the long possession, together with the assistance afforded by the judicial measurement, I think there will be but little difficulty in ascertaining the precise locality of the place called Los Palos Verdes.

The 4th condition of the grant reserves on the beach of San Pedro five hundred varas in each direction of the four cardinal points. This reservation is made by the officer who made the judicial measurement of the land, and is doubtless intended to embrace the port of San Pedro.

The equities proved in this case we think clearly entitle the petitioners to a confirmation of their claim.

A decree in conformity with this opinion will be entered.

Filed in office December 20, 1853.

GEO. FISHER, *Secretary.*

Decree of confirmation.

Jose Loreta Sepulveda and Juan Sepulveda
vs.
The United States.

In this case, on hearing the proofs and allegations, it is adjudged by the commission that the said claim of the petitioners is valid, and it is therefore decreed that the same be confirmed. The lands of which confirmation are hereby made, are known by the name of Los Palos Verdes, and are the same now occupied by said petitioners, and are bounded and described as follows, to-wit: Beginning at the southeast point of the place Los Palos Verdes, at a place called La Goleta, where there is a landmark, and running in a northerly direction eight thousand varas; thence running in a westerly course twelve thousand varas, to some sand-hills on the edge of the beach, where there is a landmark; thence running south five thousand three hundred varas, to a point on the beach
32 called El Codo; thence running on an easterly course,
leaving a reserve of five hundred varas on each one of the four cardinal points, fifteen thousand varas, to the place of beginning; reference for further description to be had to the record of judicial measurement, marked translation of H. H. No. 1, and filed in this case.

ALPHEUS FLECH,
THOMPSON CAMPBELL,
R. AUG. THOMPSON,
Commissioners.

Filed in office December 20, 1853.

GEO. FISHER, *Secretary.*

Certificate.

Office of the board of commissioners to ascertain and settle the private land claims in the State of California.

I, George Fisher, secretary of the board of commissioners to ascer-

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tain and settle the private land claims in the State of California, do hereby certify the foregoing thirty-two pages numbered from 1 to 32, both inclusive, to contain a true, correct, and full transcript of the record of the proceedings and of the decision of the said board, of the documentary evidence, and of the testimony of the witnesses, upon which the same is founded, on file in this office, in case No. 446 on the docket of the said board, wherein José Loreto Sepulveda et al. are the claimants against the United States, for the place known by the name of "Los Palos Verdes."

33 In testimony whereof, I hereunto set my hand and affix my [L. S.] seal, (not having a seal of office,) at San Francisco, California, this twelfth day of September, A. D. 1854, and of the independence of the United States of America the seventy-ninth.

GEO. FISHER, *Sec'y.*

Filed September 26th, 1854.

W. H. CARTER, *Cl'k.*

34 *Proceedings in the U. S. district court southern dist. Cala.*

35 In the United States district court in and for the southern district of California.

No. 446.

Notice of Appeal.

JOSÉ LORETO SEPULVEDA
vs.
THE UNITED STATES.

OFFICE OF THE ATTORNEY GENERAL OF THE UNITED STATES,
Washington, 30*th November*, 1854.

You will please take notice that in the above case, decided by the commissioners to ascertain and settle private land claims in the State of California in favor of the claimant, and a transcript of the proceedings in which was received in this office on the 30th day of August, 1854, the appeal in the district court of the United States for the southern district of California will be prosecuted by the United States.

C. CUSHING, *Attorney General.*

Filed January 10th, 1855.

C. E. CARR, *Clerk.*

Petition for review.

In the district court of the United States for the southern district of California.

LOS ANGELES COUNTY, STATE OF CALIFORNIA:

JOSE LORETO SEPULVEDA et al.
ads.
THE UNITED STATES.
} (Transcript No. 446.) No. 93.

36 To the honble. Isaac S. K. Ogier, judge of the district court of the United States for the southern district of California.

The petition of Pacificus Ord, (of Los Angeles county,) attorney of the United States for the southern district of Cala., who petitions in this behalf for the United States, and being present here in court in his proper person, in the name and behalf the United States, represents as follows:

That heretofore, to wit, on or about the 1st day of November, A. D. 1852, José Loreto Sepulveda and Juan Sepulveda presented a petition to the commissioners to ascertain and settle the private land claims in the State of California, claiming the tract of land called "Los Palos Verdes," in the county of Los Angeles, and in the words and figures following, viz:

"The petition of José Loreto Sepulveda and Juan Sepulveda respectfully represents: That on or about the third day of June, A. D. 1846, Pio Pico, then governor of California, in the name of the Mexican nation, by virtue of the powers and authority in him vested, the laws then in force, the customs and usages of the country affecting grants of land in California, granted in full property unto your petitioners the tract of land and rancho situated in the present county of Los Angeles, known by the name of Los Palos Verdes, containing about —— square leagues, more particularly described in the papers and maps relating to said grant of land in the archives in custody of the U. S. surveyor general for California, and in the possession of your petitioners, ready to be produced and proved before your hon. board. That copies of some portions of the papers found in the ar-
chives, as well as original papers in possession of your petition-
37 ers, are herewith filed as part of this petition. And your pe-
titioners further show that they received juridical possession of said tract of land and rancho from the proper officer having jurisdiction of such matters, as appears by original papers, documents, and maps in possession of your petitioners, and ready to be produced and proved before your honble. board. That copies of the said papers and documents are herewith filed as part of this petition.

And your petitioners further show that a tract of land at the landing of San Pedro, five hundred varas in extent each way, has been, as is reserved from this claim, according to the true intent and meaning of the provisions of said grant. And your petitioners further show that they have been in peaceable and quiet possession of said tract of land and rancho, for more than nineteen years prior to the date of said grant, under authority of the Mexican government, and your petitioners are, at the present time, in the peaceable and quiet possession of said lands, occupying the same with their houses and corrals and their horses and cattle

There is no conflicting claim to said rancho of any just validity, known to your petitioners. That said lands have not been surveyed by the United States surveyor general for California.

The evidence upon which your petitioners rely consists of the records of this grant, papers, and maps in the archives, now in the office and custody of the United States surveyor general for California, original documents, papers, and maps, in the possession of your petitioners, and the testimony to be produced before your honorable board.

38 "Respectfully submitted for such action as the justice and nature of the claim may require."

Your petitioners further represent that thereafter, to wit, on the 20th day of December, A. D. 1853, the said commissioners confirmed, by final decree, the said claim of the said José Loreto and Juan Sepulveda, in the words and figures following, to wit: "In this case, on hearing the proofs and allegations, it is adjudged by the commission that the said claim of the petitioners is valid, and it is therefore decreed that the same be confirmed. The lands of which confirmation are hereby made are known by the name of Los Palos Verdes, and are the same now occupied by said petitioners, and are bounded and described as follows, to wit: Beginning at the southeast point of the place Los Palos Verdes, at a place called La Goleta, where there is a landmark, and running in a northerly direction eight thousand varas; thence running in a westerly course twelve thousand varas to some sand-hills on the edge of the beach where there is a landmark; thence running south five thousand three hundred varas to a point on the beach, called El Codó; thence running on an easterly course, leaving a reserve of five hundred varas on each one of the four cardinal points, fifteen thousand varas to the place of beginning. Reference for further description to be had to the record of judicial measurement, marked translation of H. H., No. 1, and filed in this case.

"ALPHEUS FELCH,
"THOMPSON CAMPBELL,
"R. AUG. THOMPSON,
"*Commissioners.*"

39 That thereafter, to wit: on the 20th day of September, A. D. 1854, a duly certified transcript of the said decree and proceedings, and the papers and evidence on which it was founded in said cause, was filed in the office of the clerk of the district court of the United States for the southern district of California, and marked No. 93, (transcript No. 446;) reference to which it is prayed may be had and made a part of this petition.

That, on the 30th day of August, A. D. 1854, the honorable Caleb Cushing, Attorney General of the United States, received a duly certified duplicate of said transcript, of said final decree and proceedings of said commissioners in said cause, (No. 446,) and the papers and evidence on which said decree was founded.

That, on the 10th day of January, A. D. 1855, the said Attorney General of the United States filed, or caused to filed, on behalf of the United States, a notice with the said clerk of said district court for the southern district of California, that the appeal in said cause of José Loreto Sepulveda and Juan Sepulveda *vs.* the United States from the decision of the said commissioners to ascertain and settle the private land claims in the State of California, in the district court of the United States for the southern district of California, would be prosecuted by the United States.

Your petitioner further represents that the said land, claimed as aforesaid, is within the jurisdiction of this honorable court.

And your petitioner further represents and insists that the said
decree of said commissioners is erroneous, and ought to be re-
40 viewed, reversed, and set aside, for many errors and imperfec-
tions of law and evidence, apparent in said certified transcript of said cause, now on appeal from said commissioners to this honorable court.

And your petitioner further represents that the said claim is invalid and the said decree erroneous, on the following grounds:

I. And the said attorney denies all and singular each and every allegation in the said petition of said claimants to said commissioners, of said date; and he further denies that any grant for said land was ever made, as alleged in said petition; and he denies further that the said claimants have shown any or sufficient evidence of the validity of the said claim.

II. That the said alleged grant of Pio Pico was made in violation of the 4th article of the colonization law of Mexico, of the 18th of August, A. D. 1824, in this, that the land granted, as alleged by claimants, was and is within ten leagues of the sea-coast, and there is no evidence shown by claimants that the supreme general executive power of Mexico previously approved of the colonization of the public lands in Upper California, lying within ten leagues of the sea-coast. And it is denied that such previous consent of said supreme general executive power of Mexico in such cases was ever had.

III. That at the date of the said alleged grant the said land claimed as aforesaid was occupied by, and in the possession of, the missions of the Territory of Upper California, and it was held and occupied partic-
ularly by the mission of San Gabriel, and could not, therefore,
41 be colonized.

IV. That the said alleged grant has not the conditions required by, and is not made in entire conformity with the laws of Mexico, of the 18th day of August, A. D. 1824, and the regulations for the colonization of the territories of Mexico, of the 21st of November, A. D. 1828.

V. That the said land was not at the time of the alleged provisional concession, nor at the time of the alleged grant to said claimants by Pio Pico, unowned, unclaimed, or unoccupied, by persons other than the said claimants.

VI. That at the time of the said alleged grant of land to said claimants by Pio Pico, it belonged to the pueblo of Los Angeles, and could not, therefore, be colonized.

VII. That the genuineness of said alleged grant of land to said claimants by Pio Pico, dated June 3, 1846, is not sufficiently proved, and its genuineness is denied; that the said alleged grant does not contain any description of the locality, extent, and boundaries of the land claimed, by which it can be identified and surveyed; that the said alleged grant of said lands by said Pio Pico is void for uncertainty; and that the said alleged grant is not executed upon the lawful stamped paper.

VIII. That the map referred to in the said alleged grant, and also in the petition of said claimants to said commissioners, is not shown by them; that the said alleged map is an essential part of said alleged grant.

IX. That the pretended documents of the provisional concession of
the land known as "Los Palos Verdes," alleged to have been
42 given by the government of California to said claimants, about
nineteen years prior to the date of the said alleged grant of
said Pio Pico, and which said pretended provisional concession of the said land known as "Los Palos Verdes" is referred to in said alleged grant of Pio Pico is not shown by the said claimant; and it is denied that the said claimants ever had a provisional concession for said named tract of land, as alleged in their said petition.

X. That there is no evidence that the said alleged grant of said land by said Pio Pico was ever approved by the departmental assembly of California, or the supreme government of Mexico; and it is denied that the said alleged grant of said lands to said claimants by Pio Pico, was ever approved by the said departmental assembly, or the said supreme government

XI. That the said claimants have shown no definitively valid grant or title to the said land; and it is denied that they ever had or have a definitively valid grant or title for said land.

XII. That the documents shown by claimants, purporting to be a certified copy of the act of juridical possession of said land, dated 11th June, 1846, is not executed upon the lawful stamped paper; that there is no sufficient evidence that the said document is genuine, and its genuineness is denied; that there is no sufficient evidence that Leonardo Cota was acting first alcalde of Los Angeles at the date of the said alleged juridical possession; and that he had, as such, lawful authority, at that time, to perform said alleged juridical act or acts;
and it is denied that the said Leonardo Cota was acting first
43 alcalde of Los Angeles on the 11th of June, 1846, and that he
then had lawful authority to perform said alleged juridical act
or acts.

XIII. That the said Leonardo Cota had no lawful authority to measure and give juridical possession of the said land to said claimants, as alleged, for the reasons that the said alleged grant of said Pio Pico was, in the description of the land, so vague and indefinite that it could not be identified and measured; and for the further reason, that the said alleged grant had not then (the 11th of June, 1846) been approved by the departmental assembly of California, or the supreme government of Mexico. And the said alleged juridical act or acts of measurement and juridical possession of said land are therefore void.

XIV. That the said pretended juridical act or acts of measurement and possession of said land by said Leonardo Cota were not done according to the said alleged grant and the map referred to therein, nor according to the ordinance or law. And the said pretended juridical act or acts of measurement and possession of the said land are vague, indefinite, and void.

XV. That there is no evidence that the said claimants were in possession of the land claimed for more than nineteen years prior to the date of the said alleged grant of said Pio Pico, under the authority of the Mexican government, as alleged in their said petition to said commissioners. And it is denied that they were in the possession of the said land for more than nineteen years prior to the date of the said alleged grant of said Pio Pico under the authority of the Mexican government.

44 XVI. That there is no evidence that the said claimants performed the conditions of the said alleged grant and the requirements of the law. And it is denied that they performed the conditions of the said alleged grant and the requirements of the law.

XVII. That there is no sufficient evidence that said claimants built a house upon the said land, and that it was inhabited within one year from the date of the said alleged grant of said Pio Pico, and that they cultivated the said land. And it is denied that they built a house upon the said land, and that it was inhabited within one year from the date of the said alleged grant of said Pio Pico, and that they cultivated the said land.

XVIII. And the genuineness of the said alleged original grant of said Pio Pico for said lands is not sufficiently established by said claimants, and it is denied that the said alleged grant of Pio Pico is genuine, and that it was made at the time of its pretended date and delivered to the said claimants as alleged in their said petition. And the said alleged grant of said Pio Pico is antedated and fraudulent. And the said alleged testimonial of juridical measurement and possession by Leonardo Cota is antedated and fraudulent. And no sufficient proof having been made by said claimants of the allegations of their said petition, or in support of their said claim filed as aforesaid, no decree ought to have been made or grounded thereon, but the said petition ought to have been dismissed, and said claim rejected by said commissioners upon the grounds aforesaid.

45 And said claimants having no valid right or title, derived from the Spanish or Mexican government, to the said land claimed by them, as aforesaid, the lawful right or title in and to the said land was acquired by, and it now belongs to, the said United States by virtue of the treaty of peace, friendship, limits, and settlements with the Republic of Mexico, dated at the city of Guadalupe Hidalgo, February 2nd, A. D. 1848.

Wherefore the said Pacificus Ord, attorney of the United States for the southern district of California, for and in behalf of the United

States, by reason of the premises and in pursuance of the act of Congress entitled "An act to ascertain and settle the private land claims in the State of California," approved March 3d, A. D. 1851, and the laws and statutes in such cases made and provided, prays that the said José Loreto Sepulveda and Juan Sepulveda may be served with a copy of this petition; and that this honorable court will review the said decision, or final decree of confirmation of said commissioners, to ascertain and settle the private land claims in the State of California, and decide on the validity of the said claim of said José Loreto Sepulveda and Juan Sepulveda for said land claimed and confirmed as aforesaid, and that the same may be decreed invalid. And all such other orders, judgments, or decrees, as may be just, with costs and general relief.

P. ORD,
Attorney of the United States for the Southern District of California.

Filed August 13th, 1855.

C. E. CARR, *Clerk.*

Answer.

46 United States District Court for the southern district of California.

José Loreto Sepulveda *et al.*, *ads.* The United States.	No. 93. Transcript 446.

The respondents for answer to the petition filed int his cause answer and say: It is true that the lands mentioned in said petition, and in said transcript of the proceedings before the said board of commissioners, lies within said southern district of California, and within the jurisdiction of this court.

But these respondents deny that their title to the said land is invalid, and aver that the same is valid, and pray that the decision of the said board of commissioners be affirmed, and their title be decreed to be valid.

E. O. CROSBY,
Of Counsel for Respondent.

Filed September 29, 1855.

C. E. CARR, *Clerk.*
By J. W. ROSS, *Deputy.*

Whereupon the following proceedings were had and done in open court, December term, A. D. 1855:

Los Angeles, *December* 24, 1855.

Present, honorable I. S. K. Ogier, judge.

47 *Hearing of case set.*

José Loreto Sepulveda *et al.*, appellees, } No. 93.
ads.
The United States, appellants.

This case, by consent of parties, was set for hearing on the 2d of January, 1856.

Hearing of case passed.

Los Angeles, *January* 2, 1856.

José L. Sepulveda *et al.*, appellees, } No. 93.
ads.
The United States, appellants.

This case was called and passed informally.

Motion for order of survey.

Los Angeles, *February* 25, 1856.

José L. Sepulveda *et al.*, appellees, } No. 93.
ads.
The United States, appellants.

Motion of United States attorney for order of survey filed, and taken under advisement by the court.

48 *Motion for continuance.*

José L. Sepulveda *et al.*, appellees, } No. 93.
ads.
The United States, appellants.

On motion of U. S. att'y, (counsel of record not being present,) ordered that the above entitled cause be continued until next term.

Motion for order of survey.

José L. Sepulveda *et al.*, appellees, } No. 93.—Palos Verdes. Transcript No. 446.
ads.
The United States, appellants.

On motion of P. Ord, attorney of the United States, and on suggesting to the court that in the alleged original title of the appellees in this cause it appears that there was within the exterior limits of the land claimed herein a reservation by the government of five hundred varas square at the port of San Pedro; that the said reservation has never been surveyed, and that a survey is necessary to establish with certainty the locality of the same, and to fix its metes and bounds.

It is ordered by the court, that ——— be and he is hereby appointed by the court to make a survey of the said reservation of five hundred varas at the port of San Pedro, in the county of Los Angeles, Cala., according to the original title papers appearing in the transcript on file in this court, and to make a full report thereof in 49 open court, on the first day of the next December term of this court.

Filed Feb'y 25th, 1856.

C. E. CARR, *Clerk.*

Trial of cause and submission.

DECEMBER 9TH, 1856.

Present, Hon. I. S. K. Ogier, U. S. dist. judge.

JOSÉ LORETO SEPULVEDA *et al.*, appellees,
ads. } No. 93.
THE UNITED STATES, appellants.

And now, at this day, this cause being called for trial, the parties appear by their respective attorneys—the appellees by E. O. Crosby, esq., his attorney, and the appellant by P. Ord, esq., U. S. district attorney. When, after argument of counsel, the case is submitted to the court and taken under advisement.

Confirmation of claim.

WEDNESDAY, *December 10th*, 1856.

JOSÉ LORETO SEPULVEDA *et al.*, appellees,
ads. } No. 93.
THE UNITED STATES, appellants.

In this cause the opinion of the court was delivered confirming the claim, and a decree was ordered to be entered upon the 50 records of this court in accordance therewith.—(See Record of Deeds, book No. 1, page 95.)

Decree.

United States district court for the southern district of California, December term, A. D. 1856.

JOSÉ LORETO SEPULVEDA and JUAN SEPULVEDA,
ads. } No. 93.
THE UNITED STATES.

This cause coming on to be heard on appeal from the decision of the board of land commissioners to ascertain and settle private land claims in the State of California, under the act of Congress approved March 5th, 1851, upon the transcript of proceedings and decision of said board, and the papers and evidence upon which said decision was founded, all of which have been duly filed in this court; and counsel for the respective parties having been heard, it is ordered, adjudged, and decreed, that the decision of said board be and the same is hereby affirmed, and that the title of the said *José Loreto Sepulveda* and *Juan Sepulveda*, the above named appellees, is a good and valid one.

The land, of which confirmation is hereby made, is that known by the name of "*Los Palos Verdes*," situated in the county of Los Angeles, and is bounded and described as follows: Beginning at the southeast point of the place Los Palos Verdes at a place called La Goleta, where there is a landmark, and running in a northerly
51 direction eight thousand varas; thence running in a westerly course twelve thousand varas to some sand hills on the edge of the beach, where there is a landmark; thence running south five thousand three hundred varas to a point on the beach called El Codo; thence running on an easterly course, leaving a reserve of five hundred varas on each one of the four cardinal points, fifteen thousand varas to the place of beginning, reference being had for further description to the grant of said land made by Pio Pico, dated June 3d, 1846, to said José Loreto Sepulveda and Juan Sepulveda, and to the act of judicial possession of said lands made by Leonardo Cota, first alcalde, and dated June 11th, 1846, which said grant and act of judicial possession are filed in this case. Provided, that if there be more than eleven square leagues within said boundaries then confirmation is only made to that extent, but if the quantity of land contained in said boundaries be less than eleven square leagues, then confirmation is hereby made for such less quantity.

ISAAC S. K. OGIER,
U. S. Dist. Judge for the Southern District of California.

Filed Dec. 10th, 1856.

C. SIMS, *Clerk.*

Order of appeal.

52 TUESDAY, *24th February*, 1857.

Present, Hon. I. S. K. Ogier, U. S. dist. judge.

JOSE LORETO SEPULVEDA *et al.*, appellees,
vs. } No. 93.
THE UNITED STATES, appellants.

On motion of P. Ord, U. S. dist. attorney, it is ordered that an appeal be allowed the United States in the above cause.

Notice of vacation of appeal.

CALIFORNIA LAND CLAIMS, ATTORNEY GENERAL'S OFFICE,
9 *Feb'ry*, 1857.

SIR: In the case of the claim of José L. Sepulveda, *et al*, confirmed to the claimants by the commissioners, case No. four hundred and forty-six (446) appeal will not be prosecuted by the United States.

I am, respectfully,

C. CUSHING.

PACIFICUS ORD, Esq.,
U. S. Attorney, Los Angeles.

70

53 Filed 4th March, 1858.

C. SIMS, *Clk.*
Per W. W. STETSON, *Dep'ty.*

Motion and order of dismissal of appeal.

TUESDAY, *March 4th*, 1858, 11 *o'clock a. m.*

Present, Hon. I. S. K. Ogier, U. S. dist. judge.

JOSÉ L. SEPULVEDA, *et al.*, appellees,
vs. } No. 93.
THE UNITED STATES, appellants.

Now, on this day, come the parties aforesaid, by their respective attorneys.

Whereupon, on motion of P. Ord, United States Dist. attorney, and on showing to the court that it is not the intention of the United States government to prosecute the appeal heretofore taken in this court, by filing the letter of the United States attorney general to that effect.

It is ordered by the court that said appeal be, and the same is hereby dismissed, and that the appellees have leave to proceed under the decree heretofore rendered in their favor as under a final decree.

Motion for order for return of survey.

54 In the district court of the United States, southern district of California.

THE UNITED STATES, appellants,
vs. } No. 93.
JOSÉ LORETO SEPULVEDA and
JUAN SEPULVEDA, appellees.

Now comes the said appellants and suggest to the court that the survey of the premises claimed by the appellees in this cause, heretofore made and approved by the surveyor general of the United States for the State of California, is not made in conformity with the final decree in this cause, and that the appellants will be injured thereby, and the appellant now moves for an order of this court upon the said surveyor general directing him to return into court forthwith the approved plat of the survey aforesaid, for the further action of this court.

J. R. GITCHELL, *U. S. Dist. Att'y.*

Filed in office this 11th Sept. 1860.

C. SIMS, *Clerk.*

Order for return of survey.

55 TUESDAY, 11*th September*, 1860.

Present, Hon. I. S. K. Ogier, dist. judge.

JOSÉ LORETO SEPULVEDA *et al.*, appellees,
vs. } No. 93.
THE UNITED STATES, appellants.

Now on this day, comes J. R. Gitchell, U. S. district attorney, and on suggesting to the court that the survey of the land claimed in this case made under final decree and approved by the U. S. surveyor general for California does not conform to said decree and is erroneous, and that said survey will be to the party applicant.

On application of J. R. Gitchell, esq., U. S. district attorney, it is ordered that the said surveyor general return to this court the plat of said survey, and that the United States be allowed ——— days from and after the return thereof to file exceptions thereto, and it is further ordered that a certified copy of this order be served upon the said surveyor general for his information.

Certified order for return of survey.

UNITED STATES DISTRICT COURT,
For the Southern District of California.

THE UNITED STATES, appellants,
vs.
JOSE LORETO SEPULVEDA, and
56 JUAN SEPULVEDA, appellees.
No. 93.
"LOS PALOS VERDES."

It being suggested to the court that the survey of the land claimed in this case, made under final decree, and approved by the U. S. surveyor general for California, does not conform to said decree and is erroneous, and that the said survey will be to the injury of the United States, on application of J. R. Gitchell, U. S. district attorney, it is ordered that the said surveyor general return to this court the plat of said survey and that the United States be allowed —— days from and after the return thereof, to file exceptions thereto; and it is further ordered that a certified copy of this order be served upon the said surveyor general for his information.

I. S. K. OGIER,
U. S. Dist. Judge.

UNITED STATES OF AMERICA,
Southern Dist. of California, County of Los Angeles.

I, C. Sims, clerk of the United States district court for the southern district of California, do hereby certify that the above and foregoing is a full, true and correct copy of the original order, made and entered on the 11th day of September, 1860, in said case, No. 93 on the docket of said court, wherein José Loreto Sepulveda and Juan Sepulveda are claimants against the United States, as appears of record in my office.

[L. S.] In witness whereof, I herewith set my hand and affix the seal of said court, this the 11th day of September, 1860.

57 C. SIMS, *Clerk.*

Citation for Surveyor General.

UNITED STATES OF AMERICA,
Southern District of California.

The President of the United States, to J. W. Mandeville U. S. surveyor general for California, greeting: You are hereby notified that the United States district court for the southern district of California, at the stated term of said court, 1860, in case No. 93, on the docket of said court, wherein José L. Sepulveda, *et al.*, are claimants against the United States, made and caused to be entered an order of which the above and foregoing is a certified copy, herewith transmitted to you for your information, and you are hereby required to take notice of the same.

Witness, the Hon. Isaac S. K. Ogier, judge of the United States district court, for the southern district of California, this the 11th day of September, 1860.
[L. S.]

Attest my hand and the seal of said court, the day and year last above written.

C. SIMS, *Clerk*

SAN FRANCISCO, *September* 17, 1860.

I hereby certify that I have this day made personal service of this order on J. W. Mandeville, United States surveyor general for California, by delivering to him a certified copy of the same.

JAMES C. PENNIE, *United States Marshal,*
By A. W. BUCHANAN, *Dep'y U. S. Marshal.*

Marshal's fees, $32.

58 Filed this 22d September, 1860.

C. SIMS, *Clerk.*

Deposition of E. Hadley.

In the district court of the United States, for the southern district of California.

JOSÉ LORETO SEPULVEDA and JUAN SEPULVEDA,
ads.
THE UNITED STATES.
} No. 93.

Ebenezer Hadley, being duly sworn, upon his oath says, that his profession is that of practical surveyor and engineer; that he is at the present time the duly elected and qualified county surveyor of the county of Los Angeles. Deponent further says that he knows the rancho of Palos Verdes, in said county, and that this deponent surveyed a portion of the same for the United States, under the direction of Henry Hancock, one of the deputies of the surveyor general of the United States for the State of California. Deponent has also examined the map of said survey, purporting to have been approved by said surveyor general, that he has carefully compared the boundary lines

in said survey with the boundary lines as given in the final decree of
the court in this case, and finds a great discrepancy in the same.
Deponent further says, that the distance from the point marked "sand
hills" on said map, to the point marked "La Goleta," following the
meanderings of the coast, is 39,493$\frac{2}{10}$ varas; that the direction of said
line is first southerly, thence easterly, and thence northerly; that the
distance from said point marked "sand hills" to the point
59 marked "El Codo" on said map, is 21,541.72 varas; that by
running a line from the said point marked "sand hills," 5,300
varas along the beach to a point on the 21st course on said map, distant
47,327 chains from the beginning of said 21st course, and thence
running eastwardly in a direct course to the place marked "La Goleta,"
the distance is between 15,000 varas and 16,000 varas. Deponent
further says, that the quantity of land included in the survey
aforementioned, is about double the quantity that would be included
by following the boundaries as given in the final decree in this case.

Deponent further says that the portion of said rancho aforesaid, which was surveyed as aforesaid, is that beginning at the aforesaid point marked "sand hills," and running thence following the meanderings of the coast to the point marked "Capt. Ord's Wells." That in making such survey he had neither the decree of this court nor any other paper giving a description of said rancho before him, but that he solely followed the verbal directions given him by the said Hancock, in running the lines aforesaid.

And further this deponent saith not.

EBENEZER HADLEY.

Sworn to and subscribed before me, this 10th day of September, A. D. 1860.

Attest my hand the day and year last above written.

C. SIMS,
U. S. Commissioner for California.

60 Filed in office the 11th Sept., 1860.

C. SIMS, *Clerk.*

Deposition of D. McLaren.

In the district court of the United States, southern district of California.

JOSÉ LORETO SEPULVEDA and JUAN SEPULVEDA, *ads.* THE UNITED STATES. } No. 93.

Daniel McLaren being duly sworn, upon his oath deposes and says, that he has examined a plat of the survey from the office of the surveyor general of the United States for the State of California, purporting to be the approved official survey of the rancho of Palos Verdes, in the county of Los Angeles, and that he has carefully compared the boundary lines in said survey with the boundary lines as given in the final decree of this court in this case, and a certified copy

of which deponent has also seen and examined. Deponent says that he has calculated the distance upon said map, as run by the said surveyor general or his deputy, as run from the point on said map, marked "Sand Hills," to the point marked on said map, "La Goleta," and finds the whole distance to be $39{,}493\frac{2}{10}$ varas; that the direction of said line is, first, southerly; thence easterly, and thence northerly; that the distance from said point marked "Sand Hills" to the point marked "El Codo," on said map, is 21,541.72 varas; that by running a line from the said point, marked "Sand Hills," 5,300
61 varas along the beach to a point on the 21st course on said map,
distant 47,327 chains from the beginning of said 21st course, and thence running eastwardly in a direct course to the plan, marked "La Goleta," the *the* distance is between 15,000 and 16,000 varas. This affiant further says, that the quantity of land included in the survey aforementioned is about double the quantity that would be included by following the boundaries as given in the aforesaid final decree in this cause. And further this deponent saith not.

D. McLAREN.

Sworn to and subscribed before me this 10th day of September, A. D. 1860.

Attest my hand the day and year last above written.

C. SIMS,
U. S. Commissioner for Cala.

Filed in office this 11th Sept., 1860.

C. SIMS, *Clerk.*

[Here follows map referred to.—See original, page 62.]

NOTES ATTACHED TO MAP.

BOUNDARIES.

No	Course.	Dist.	No.	Course.	Dist.	No.	Course.	Dist.	No.	Course.	Dist.
	°			°			°			°	
1	N. 88 W.	3.84	62	S. 28 E.	6.00	123	S. 26½ E.	2.50	184	N. 11 E.	2.00
2	S. 4½ E.	36.50	63	S. 38 E.	5.50	124	S. 49 E.	18.00	185	N. 5 E.	2.00
3	S. 5 W.	28.50	64	South	6.50	125	S. 10½ E.	11.50	186	N. 35 E.	1.54
4	S. 8½ W.	39.50	65	S. 55½ E.	14.00	126	S. 39 E.	4.50	187	S. 70 W.	20.22
5	N. 81½ W.	0.50	66	S. 14 W.	6.00	127	S. 50½ E.	7.50	188	N. 20 W.	21.00
6	S. 11 W.	18.25	67	S. 53 W.	7.00	128	S. 18½ E.	9.50	189	N. 70 E.	20.23
7	S. 20 W.	12.00	68	S. 48 E.	6.00	129	S. 53½ E.	4.00	190	N. 4½ W.	6.00
8	S. 45½ W.	5.50	69	S. 29 E.	7.50	130	S. 85 E.	7.00	191	N. 18½ W.	8.00
9	S. 85 W.	5.50	70	S. 2 W.	5.50	131	N. 85 E.	7.00	192	N. 46 E.	10.00
10	S. 4½ E.	0.50	71	S. 17 W.	9.50	132	S. 69½ E.	2.50	193	N. 58¾ E.	12.50
11	S. 61½ W.	5.00	72	S. 23 E.	4.00	133	S. 73½ E.	15.00	194	N. 68½ E.	12.50
12	S. 48½ W.	5.50	73	S. 32½ E.	9.00	134	S. 89 E.	8.00	195	N. 67½ E.	1.50
13	S. 88½ W.	8.00	74	S. 9½ E.	2.50	135	S. 58½ E.	5.50	196	N. 18¾ E.	2.00
14	S. 75½ W.	2.00	75	S. 45 E.	9.50	136	S. 42 E.	8.50	197	N. 4½ W.	3.50
15	S. 66 W.	7.00	76	S. 17 W.	10.50	137	S. 59½ E.	4.00	198	N. 37 W.	4.00
16	S. 61½ W.	15.00	77	S. 6 W.	1.60	138	S. 76½ E.	14.00	199	N. 72½ W.	4.50
17	S. 54½ W.	4.00	78	S. 86 E.	10.00	139	S. 47 E.	5.50	200	N. 7 W.	10.00
18	S. 43½ W.	6.50	79	N. 80 E.	17.50	140	S. 67 E.	3.00	201	N. 21½ W.	10.50
19	S. 36 W.	11.50	80	S. 72 E.	11.50	141	S. 74 E.	11.50	202	N. 49½ W.	1.50
20	S. 77 W.	3.50	81	S. 39½ E.	5.50	142	S. 53½ E.	16.00	203	N. 3½ W.	13.00
21	S. 41 E.	7.00	82	S. 7 W.	6.50	143	S. 71½ E.	23.50	204	N. 21 E.	9.50
22	S. 7½ E.	8.50	83	S. 49 E.	2.00	144	N. 83 E.	10.00	205	N. 29½ E.	10.00
23	S. 59½ E.	1.50	84	S. 65 E.	2.50	145	S. 51½ E.	10.00	206	N. 19½ E.	13.00
24	S. 34 E.	6.00	85	S. 68½ E.	5.00	146	S. 87 E.	4.50	207	N. 31 E.	11.00
25	S. 8½ E.	11.50	86	S. 23 E.	7.50	147	S. 45 E.	6.00	208	N. 17½ E.	3.42
26	S. 38½ W.	4.00	87	S. 45 E.	6.00	148	S. 18 E.	7.00	209	N. 83½ W.	5.00
27	S. 70½ W.	7.50	88	N. 64½ E.	3.00	149	S. 65 E.	7.00	210	S. 57½ W.	5.50
28	S. 65 W.	24.50	89	N. 81 E.	3.00	150	S. 14½ E.	7.50	211	N. 52½ W.	4.50
29	S. 63 W.	9.50	90	N. 88 E.	3.00	151	N. 65 E.	11.50	212	N. 34 W.	9.50
30	S. 50 W.	15.00	91	N. 60½ E.	3.50	152	S. 81 E.	12.50	213	N. 51½ W.	4.00
31	S. 36½ W.	8.00	92	N. 7 E.	3.50	153	S. 57 E.	12.00	214	N. 44 W.	3.00
32	S. 48 W.	14.00	93	N. 42½ E.	7.00	154	S. 69½ E.	13.00	215	N. 69½ W.	5.00
33	S. 31 W.	13.50	94	N. 56 E.	4.50	155	S. 75 E.	17.00	216	S. 33 W.	4.00
34	S. 23½ W.	7.00	95	S. 52 E.	4.00	156	S. 63½ E.	17.00	217	N. 36½ W.	3.50
35	S. 8 W.	14.50	96	N. 21½ E.	3.00	157	S. 80½ E.	14.50	218	N. 23 E.	6.00
36	S. 46 W.	19.00	97	N. 45½ E.	4.50	158	East.......	4.00	219	N. 78½ E.	2.00
37	S. 32½ W.	8.00	98	S. 55 W.	14.00	159	S. 55 E.	4.00	220	N. 21½ W.	4.00
38	S. 33 E.	4.50	99	N. 56 W.	8.00	160	S. 2 E.	4.50	221	N. 80 W.	7.50
39	S. 53½ E.	7.50	100	S. 36½ W.	0.50	161	S. 31½ E.	6.50	222	S. 65 W.	14.50
40	N. 81 E.	11.00	101	S. 70 W.	3.50	162	N. 39 E.	4.00	223	N. 50½ W.	22.50
41	S. 60 E.	7.50	102	N. 56½ W.	10.50	163	N. 78 E.	10.50	224	N. 4½ W.	20.50
42	S. 34½ E.	8.50	103	N. 80 W.	16.50	164	S. 69½ E.	4.00	225	N. 66 E.	23.00
43	S. 8½ E.	9.00	104	S. 72½ W.	11.00	165	N. 76½ E.	8.00	226	S. 63½ E.	11.00
44	S. 18½ W.	3.50	105	S. 61 W.	18.00	166	N. 52 E.	7.50	227	N. 50¾ E.	9.50
45	S. 57 W.	3.00	106	S. 35 W.	7.50	167	N. 68½ E.	5.50	228	N. 80 E.	4.00
46	S. 50 W.	5.00	107	S. 46 W.	4.50	168	N. 59 E.	3.00	229	N. 54½ E.	9.00
47	S. 72 W.	6.00	108	S. 38 W.	6.00	169	N. 10 E.	4.00	230	N. 41½ E.	7.50
48	S. 16 E.	5.50	109	S. 62½ E.	6.00	170	N. 50 E.	3.50	231	N. 18½ E.	10.00
49	S. 87½ E.	4.00	110	N. 14 W.	3.00	171	N. 11½ W.	2.50	232	North	18.00
50	N. 78½ E.	2.60	111	N. 29 E.	5.00	172	N. 22½ W.	2.50	233	N. 42½ W.	4.00
51	S. 40½ E.	7.00	112	N. 83 E.	10.50	173	N. 32 E.	4.00	234	N. 4½ W.	3.50
52	S. 16 W.	11.00	113	S. 71½ E.	5.00	174	N. 34 W.	9.50	235	N. 24 E.	13.00
53	S. 57½ E.	1.50	114	S. 38 E.	4.50	175	N. 10 E.	3.50	236	N. 76 W.	1.00
54	S. 71½ E.	12.00	115	S. 87½ E.	4.40	176	N. 19½ E.	4.00	237	N. 23 W.	6.00
55	N. 81 E.	5.00	116	N. 2 W.	3.00	177	N. 4½ W.	1.50	238	N. 2[illegible]½ E.	9.50
56	S. 53 E.	5.00	117	N. 73½ E.	5.50	178	N. 13 W.	7.00	239	N. 70° 32 W.	212.00
57	S. 2 W.	3.50	118	N. 49 E.	8.00	179	N. 7 E.	5.00	240	N. 64¼ W.	46.32
58	S. 41½ W.	6.50	119	N. 87 E.	9.50	180	N. 20 E.	2.00	241	N. 66½ W.	104.61
59	S. 6 W.	2.00	120	S. 60 E.	14.50	181	N. 15 E.	8.00	242	N. 77½ W.	138.50
60	S. 53½ W.	7.50	121	S. 76 E.	5.50	182	N. 35 E.	12.00	243	N. 84½ W.	185.67
61	S. 7½ E.	9.50	122	S. 45 E.	14.00	183	N. 28½ E.	2.50	244	N. 88 W.	32.10

Aggregate of exterior boundaries, 2,632.80 chains = 32 miles, 72 chains, 80 links.

U. S. SURVEYOR GENERAL'S OFFICE.
San Francisco, California.

I hereby certify this to be a full, true, and correct copy of the original plat on file in this office, of the official survey of the rancho Los PALOS VERDES finally confirmed to José Loretto Sepulveda *et al.*

In witness whereof, I have hereunto signed my name and caused the seal of this office to be affixed this 19th day of September, 1860.

[SEAL.]
J. W. MANDEVILLE,
U. S. Surv'r Gen'l, Cala.

The field notes of the rancho Los Palos Verdes, and from which this plat has been made out, have been examined and approved, and are on file in this office.

(Signed,)
J. W. MANDEVILLE,
U. S. Surv'r Gen'l, Cala.

SAN FRANCISCO, CALIFORNIA, *September* 19, 1859.

63 *Exceptions to survey.*

In the district court of the United States for the southern district of California.

THE UNITED STATES, appellants,
vs.
JOSÉ LORETO SEPULVEDA and JUAN SEPULVEDA, appellees. } No. 93.

Now comes the said appellants by J. R. Gitchell, U. S. district attorney, and to the final survey of the lands claimed in this case, made and approved by the surveyor general of the United States for the State of California. And the appellants specify the following line upon the map of said survey as the line to which exception is taken, to wit:

The line beginning at station 21 on the map of said survey, southerly 5,300 varas from the place on the map aforesaid, marked "Sand Hills," "Beginning and running thence, following the meanderings of the coast to the place marked 'La Goleta.'"

U. S. DISTRICT COURT, *southern district, Cala.*

J. R. Gitchell, U. S. district attorney, southern district of California, being duly sworn, upon his oath says, that the foregoing exceptions to the survey of the premises claimed in the above-entitled cause is true, as he verily believes.

J. R. GITCHELL.

64 Sworn and subscribed before me this 1st day of October, A. D. 1860.

C. SIMS, *Clerk.*

To the appellees or their attorneys in the above entitled cause:

You are hereby notified that the hearing of the above and foregoing exceptions in the above entitled cause will be brought on to a hearing before said court in thirty days after the service upon you of a copy of the same, or as soon thereafter as counsel can be heard.

J. R. GITCHELL,
United States District Attorney.

LOS ANGELES, *October* 4, 1860.

I served a certified copy of the within on José Loreto Sepulveda and Juan Sepulveda, in the city of Los Angeles, on the 6th day of October, 1860.

JAMES C. PENNIE,
U. S. Marshal Southern District of California.

Marshal's fees, $4 18.

Filed in office October 10, 1860.

C. SIMS, *Clerk.*

Denial of exceptions.

In the district court of the United States for the southern district of California.

UNITED STATES, appellants,
vs.
JOSÉ LORETO SEPULVEDA, appellees. } No. 93.

65 Now come the said appellees, by Scott & Drown, their attorneys, and deny each and every exception filed herein, and allege that the survey of the lands claimed in this case, made and approved by the surveyor general of the United States for California, and the map of which is now on file in this case, is correct, and in conformity with the decree of confirmation made herein.

SCOTT & DROWN,
Attorneys of appellees.

Received service of a notice, of which the above is a true copy.

J. R. GITCHELL,
United States District Attorney.

LOS ANGELES, *November* 1, 1860.

Filed this 1st November, 1860.

C. SIMS, *Clerk.*

Continuance.

Whereupon the following proceedings were had and done in open court:

TUESDAY, *November* 13, 1860.

Present, Hon. I. S. K. Ogier, judge.

JOSÉ L. SEPULVEDA *et al.*
vs.
THE UNITED STATES. } No. 93.

In this case the parties appearing, Scott & Lander, attorneys on behalf of claimants, and J. R. Gitchell, esq., district attorney, on behalf of the United States, and by consent this case is continued to next term.

66 *Subpœna.*

United States district court, southern district of California.

The United States,
vs.
José Loreto Sepulveda.
No. 93.

United States of America,
State of California, county of Los Angeles.

The President of the United States to E. Hadley, William H. Leighton, and D. McLaren, greeting: You are hereby required that, all and singular business and excuses being set aside, you appear and attend before G. L. Mix, clerk of the United States district court for the southern district of California and ex officio commissioner of the United States, at his office in the city of Los Angeles, on Friday, the 15th day of February, 1861, at 10 o'clock a. m. of said day, then and there to testify in the above stated cause, now pending in said United States district court, on the part of the above named United States. And for failure to attend you will be deemed guilty of a contempt of court, and liable to pay all damages and losses sustained thereby to the party aggrieved.

[L. S.] Witness my hand and the seal of the United States district court, affixed this the 13th day of February, A. D. 1861.

G. L. MIX,
Clerk and ex officio Commissioner,
Per JOHN O. WHEELER,
Deputy.

Personally served the within upon the within-named persons, to-wit: William H. Leighton, E. Hadley and D. McLaren, by
67 reading this original to them in the city and county of Los Angeles, California, February 14th, A. D. 1861.

JAMES C. PENNIE, *U. S. Marshal,*
Per J. F. BURNS, *Deputy.*

Filed February 14, 1861.

G. L. MIX, *Clerk,*
Per JOHN O. WHEELER, *Deputy.*

Deposition of W. H. Leighton.

José Loreto Sepulveda *et al.*, appellees,
vs.
The United States, appellants.
Case No. 93.

Deposition of William H. Leighton, taken before G. L. Mix, clerk of the United States district court for the southern district of California and ex officio United States commissioner for the district of California, at the United States court-house in the city of Los Angeles, on Thursday the 14th day of February, A. D. 1861, at 4 o'clock p. m. on said day, on behalf of the appellants, by the stipulation of the parties to be used as testimony in a certain cause now pending in the United States district court for the southern district of California, being case No. 93 on the docket of said court, wherein the United States are appellants, and José Loreto Sepulveda *et al.* are appellees.

Present J. R. Gitchell, U. S. dist. attorney, in behalf of the appellants, and Scott and Drown, attorneys, in behalf of the appellees.

68 William H. Leighton, being duly sworn as a witness in the above entitled cause, deposes and says:

Examined on the part of the United States.

Quest. What is your age, name, occupation, and place of residence?

Ans. William H. Leighton; age, 33 years; land surveyor and civil engineer.

Quest. Have you examined the final decree of the district court of the United States for the south'n dist. of Cal'a in this case, and also the map in this case now on file, purporting to be the approved map of the final survey of the lands claimed in this cause, from the office of the surveyor general of the United States for the State of California?

Ans. Yes, I have.

Ques. State if you have made any calculations or measurements on said map.

Ans. I have made some calculations from the map.

Ques. Commencing at the point marked "beginning" on said map, to what point on the same would (5,300) varas reach, following the meanderings of the coast in a southerly direction?

Ans. To a point four chains and seventy-three links south of station marked "twenty-one" on the map.

Quest. What is the distance from this last-named point, following the meanderings of the coast in a southerly direction, to the point marked "El Codo" on said map?

Ans. It would be six hundred and eighty-four chains and seventeen links, or $16,241\frac{9}{10}$ varas.

Quest. What is the whole distance from the point marked "beginning" on said map, following the lines above described, to
69 El Codo?

Ans. Nine hundred and seven chains and sixty-nine links, or $21,541\frac{9}{10}$ varas.

Quest. What is the distance from "El Codo" to the point marked "La Goleta" on said map, following the meanderings of the coast in a southeasterly direction and then in a northerly direction?

Ans. Seven hundred and fifty-six chains and forty-one links, or $17,951\frac{6}{10}$ varas.

Quest. What is the whole distance along these lines, following the meanderings of the coast, from the point marked "beginning" to the point marked "La Goleta" on said map?

Ans. One thousand six hundred and sixty-four chains and ten links, or $39{,}493\frac{5}{10}$ varas.

Quest. What is the distance from the point on the coast 5,300 varas, southerly from the point marked "beginning" on said map, in a direct line in a southeasterly direction, to the point marked "La Goleta"?

Ans. By the scale of the map the distance is six hundred and sixty-six chains, or $15{,}805\frac{9}{10}$ varas.

WILLIAM H. LEIGHTON.

I, G. L. Mix, of the city and county of Los Angeles and State of California, clerk of the dist. court of the United States for the southern dist. of Cal'a, and ex officio commissioner to take affidavits and bail in civil cases pending in the courts of the United States, and depositions under the acts of Congress approved September 24th, A. D.
1789, February 20th, A. D. 1812, and March 1st, A. D. 1812,
70 by virtue of my office of clerk of the United States court of
the southern district of California, and by special appointment by the United States circuit court for the State and circuit of California, do hereby certify that the foregoing deposition of William H. Leighton was taken before me on the 14th day of February, A. D. 1861, according to the stipulations of the parties, at the United States district court-house in the city of Los Angeles and State of California, in behalf of the appellants.

That the said William H. Leighton was by me duly sworn according to law as a witness in said cause in the caption of this deposition mentioned, and after being so sworn his testimony was by me reduced to writing in his presence, and after having been by me carefully read to him, and by him corrected in every particular as he desired, was by him signed in my presence.

In witness whereof I have hereunto set my hand and privaet seal, [L. S.] (having no seal of office,) this 14th day of February, A. D. 1861.

G. L. MIX,
Clerk of the United States District Court for the Southern District of Cala. and ex officio U. S. Commissioner.

Filed this 14th of February, 1861.

G. L. MIX, *Clerk.*

71 *Subpœna.*

In the district court of the United States for the southern district of California.

JOSÉ LORETO SEPULVEDA
vs. } No. 93.
THE UNITED STATES.

The President of the United States sends greeting to Daniel McLaren and Hadley:

We command you that, all and singular business and excuses being laid aside, you appear and attend at the office of the United States district clerk for the southern district of California, in the city of Los Angeles, Cala., before Gustavus L. Mix, clerk of said court and ex officio United States commissioner, on the 22d day of February, A. D. 1861, at 1 o'clock p. m., then and there to testify in the above stated cause, now pending in said court, on the part of the United States, and for a failure to attend you will be deemed guilty of a contempt and liable to pay all loss and damages sustained thereby to the party aggrieved, and forfeit one hundred dollars in addition thereto.

Witness Hon. Roger M. Taney, chief judge of the Supreme Court of the United States, with my private seal attached, this 22d day of February, A. D. 1861.

[L. S.]

Attest: G. L. MIX,
Clerk and Ex Officio.
Per JOHN O. WHEELER,
Deputy Clerk.

Served the within upon the within-named persons personally by reading the within to them in the city and county of Los Angeles, California, this 22d day of February, A. D. 1861.

Fees $1 12. JAMES C. PENNIE,
U. S. Marshal.
Per J. F. BURNS, *Deputy.*

Filed Feb'y 22d, 1861.

G. L. MIX, *Cl'k.*
Per JOHN O. WHEELER, *Dep'ty.*

72 *Notice to take testimony.*

In the district court of the United States, southern district of California.

THE UNITED STATES, appellants,
vs.
JOSE LORETO SEPULVEDA *et al.*, appellees.
No. 93—"Palos Verdes."

To the said appellees or their attorneys:

You are hereby notified that on the twenty-second day of this month, between the hours of 11 o'clock a. m. and 4 o'clock p. m. of said day, the said United States will proceed to take the testimony of D. McLaren, Ebenezer Hadley and other witnesses, to be used on the hearing of the cause aforesaid. The taking of said testimony will be continued from day to day between the hours aforesaid until finished, and will be taken before competent authority at the office of the clerk of the court aforesaid in the city of Los Angeles, when and where you may attend if you see proper.

Los Angeles, February 15th, 1861.

J. R. GITCHELL,
U. S. Dist. Att'y.

Personally served the within by delivering to Ezra Drown a true copy of the within at Los Angeles city and county, State of California, this 16th day of February, A. D. 1861.

JAMES C. PENNIE,
U. S. Marshal.

Fees $2 36. By J. F. BURNS, *Deputy.*

Filed Feb'y 16th, 1861.

G. L. MIX, *Cl'k.*
Per JOHN O. WHEELER, *Deputy.*

73 *Dep't'n of D. McLaren.*

JOSE LORETO SEPULVEDA *et al.*,
vs.
THE UNITED STATES.
} Case No. 93.

Deposition of Daniel McLaren, taken before G. L. Mix, clerk of the district court of the United States for the southern district of California and ex officio United States commissioner for the district of California, at the United States court-house in the city of Los Angeles, on Friday, the 22d day of February, A. D. 1861, at 2 o'clock p. m. on said day, on behalf of the United States, by the notice to parties hereunto annexed, to be used as testimony in a certain cause now pending in the United States district court for the southern dist. of California, being case No. 93 on the docket of said court, wherein the United States are appellants and José Loreto Sepulveda *et al.* are appellees.

Present, J. R. Gitchell, U. S. dist. att'y, in behalf of the appellants, the said appellees failing to appear either in person or by attorney.

The witness, Daniel McLaren, being duly sworn, answers to the interrogatories of the U. S. dist. attorney as follows:

Quest. What is your name, age, occupation and place of residence?

Ans. Daniel McLaren; age, 41 years; occupation, miscellaneous at present; residence, in the city of Los Angeles.

74 **Quest. Have you read the final decree in this case, and have you examined the map and final survey of the land claimed in this case, and now on file in this court?**

Ans. I have read and examined them.

Ques. State if you have made any measurements or calculations of any distances upon said map?

Ans. I have.

Ques. State to what place on the said map would 5,300 varas reach, commencing at the point "beginning" or "sand hills" on said map, thence following the meanderings of the coast in a southerly direction?

Ans. The line would run to station twenty, plus four chains and seventy-three links.

Ques. State if you have estimated the distance, following the meanderings of the coast in a southerly direction from the aforesaid

point marked "beginning," or "sand hills," to the point marked "El Codo" on said map?

Ans. I have made a calculation of the distance upon the map and I find the same to be twenty-one thousand five hundred and forty-one varas, and seventy-two one hundredths of a vara.

Ques. State if you have estimated the distance from the aforesaid point "beginning," "sand hills," on said map, following around the meanderings of the coast to the point marked "La Goleta," and what you find said distance to be?

Ans. I have, and find the distance to be thirty-nine thousand four hundred and ninety-three and two tenths varas.

Ques. What is the distance from the point on the coast five thousand three hundred varas southerly from the point marked "beginning," "sand hills," on said map in a direct line in a south-
75 easterly direction to the point marked "La Goleta?"

Ans. I make it about fifteen thousand nine hundred varas, by measurement of the scale on said map. I do not pretend that this distance is exact, but it is an approximation?

Ques. State what knowledge you have of surveying and measurements, and what means you have had of acquiring a knowledge of the same?

Ans. I was employed in the office of the surveyor general of California for two years, as an assistant and clerk; indeed, I had charge of the office for the whole time I was there; besides this my previous education was such as to make me an expert in figures and calculations.

D. McLAREN.

I, G. L. Mix, clerk of the United States district court for the southern district of California, and *ex officio* commissioner to take affidavits and bail in civil cases pending in the courts of the United States, and depositions under the acts of Congress approved September 24th, A. D. 1789, February 20th, A. D. 1812, and March 1st, A. D. 1812, by virtue of my office of clerk of the United States court of the southern district of California, do hereby certify that the foregoing deposition of Daniel McLaren was taken before me on the 22d day of February, A. D. 1861, according to the notice hereunto annexed, at the United States district court-house, in the city of Los Angeles, State of California, in behalf of the United States. That the said Daniel McLaren was by me duly sworn according to law as a witness in said cause in the caption of this deposition mentioned,
76 and after being so sworn, his testimony was by me reduced to
writing in his presence, and after having been by me carefully read to him, and by him corrected in every particular as he desired, was by him signed in my presence.

[L. S.] In witness whereof, I hereunto set my hand and private seal, (having no seal of office,) this 22d day of February, A. D. 1861.

G. L. MIX,

Clerk of the United States District Court for the Southern Dist. of California and ex officio U. S. Commissioner.

Filed this 23d day of February, 1861.

G. L. MIX, *Clerk.*
Per JOHN O. WHEELER, *Deputy.*

Deposition of E. Hadley.

José Loreto Sepulveda *et al.*
vs.
The United States.
} Case No. 93.

Deposition of E. Hadley, taken before G. L. Mix, U. S. clerk for the southern district of California, and ex officio United States commissioner for the district of California, at the United States courthouse, in the city of Los Angeles, on Friday, the 22d day of February, A. D. 1861, at 2 o'clock p. m. on said day, on behalf of the United States, by the notice to the parties hereunto annexed, to be used as testimony in a certain cause now pending in the United States dis-
trict court for the southern district of California, being case
77 No. 93 on the docket of said court, wherein the United States
are appellants, and José Loreto Sepulveda *et al.*, are appellees.

Present, J. R. Gitchell, U. S. att'y in behalf of the appellants; and the said appellees failing to appear either in person or by attorney.

The witness, E. Hadley, being duly sworn, is examined by the U. S. district attorney on behalf of the United States:

Ques. What is your name, age, occupation, and place of residence?

Ans. My name is E. Hadley; age, 37 years; occupation, county surveyor of Los Angeles county; and I reside in the city of Los Angeles.

Ques. Have you examined the final decree of the district court of the United States for the southern district of California in this case, and also the map in this case now on file, purporting to be the approved map of the final survey of the lands claimed in this cause from the office of the surveyor general of the United States for the State of California?

Ans. I have.

Ques. State if you have made any calculations or measurements of any of the lines delineated on said map?

Ans. I have made calculation of those lines bordering on the coast, also another line rnnning from between station 20 and 21 to the point marked "La Goleta."

Ques. Commencing at the point marked "beginning," on said map, to what point on the same would (5,300) varas reach, following the meanderings of the coast in a southerly direction?

Ans. It would reach a point on the 21st course, four chains
78 and seventy-three links from the beginning of said 21st
course.

Ques. What is the distance from the point marked "beginning," on said map, following the lines above described, to "El Codo?"

Ans. The whole distance is nine hundred and seven (907) chains and sixty-nine links, or twenty-one thousand five hundred and forty-one varas and a fraction.

Ques. What is the distance from "El Codo" to the point marked "La Goleta," on said map, following the meanderings of the coast in a southeasterly and then in a northerly direction?

Ans. Seven hundred and fifty-six chains and forty-one links, or 17,952 varas.

Ques. What is the whole distance along these lines, following the meanderings of the coast from the point marked "beginning" to the point marked "La Goleta," on said map?

Ans. The distance, in varas, is 39,493 and a fraction over.

Ques. What is the distance from the point on the coast 5,300 varas southerly from the point marked "beginning," on said map, in a direct line in a southeasterly direction, to the point marked "La Goleta?"

Ans. It is a very trifle less than 16,000 varas, I cannot state exactly, having made no very exact calculations—this distance is an approximation merely.

The hour of four having arrived, the further taking of this deposition is adjourned until to-morrow at 2 o'clock p. m.

79 Now at this date, Saturday, February 23, A. D. 1861, at 2 o'clock p. m., appearing the attorney for the United States, and the aforesaid witness, E. Hadley, and the examination was proceeded with as follows:

Ques. State what knowledge you have of the running of the line beginning at the point marked "sand hills" "beginning," and thence following the meandering of the coast to the point marked "La Goleta," for the purposes of the official survey in this case.

Ans. When I ran the lines of that ranch I did not know that it was for that purpose. As I understood, I was to run the lines to correct a mistake of 10 chains made. I was sent to run this line by Henry Hancock, United States deputy surveyor, to ascertain where the error was; as far as the map on file in this case, it corresponds with my notes of survey that I took or made on the ground. I had no guide for running this line except the verbal directions of Henry Hancock. I saw no paper, nor anything else, giving a description of the boundaries of this ranch, previous to running this line. I have no knowledge of running the other lines as described in the map of judicial survey. The other lines were not run by me.

EBENEZER HADLEY.

I, Gustavus L. Mix, clerk of the U. S. district court for the southern district of California, of the city of Los Angeles and State of California, and ex officio U. S. commissioner to take affidavits and bail in civil cases pending in the courts of the United States,
80 and depositions, under the acts of Congress approved September 24, A. D. 1789, February 20, A. D. 1812, and March 1, A. D. 1812, by virtue of my office of clerk of the United States court of the

southern district of California, do hereby certify that the foregoing deposition of E. Hadley was taken before me on the 22d day of February, A. D. 1861, according to the notice hereunto annexed, at the United States district court-house, in the city of Los Angeles and State of California, in behalf of the United States.

That the said E. Hadley was by me duly sworn, according to law, as a witness in said cause in the caption of this deposition mentioned, and after being so sworn, his testimony was by me reduced to writing in his presence, and after having been by me carefully read to him, and by him corrected in every particular as he desired, was by him signed in my presence.

In witness whereof, I have hereunto set my hand and private
[L. S.] seal, (having no seal of office,) this 23d day of February,
A. D. 1861.

G. L. MIX,
Clerk of the United States District Court for the
Southern Dist. of California and ex officio U. S. Commissioner.

Filed this February 23d, 1861.

G. L. MIX, *Clerk.*
Per JOHN O. WHEELER, *Deputy.*

81 *Notice of hearing.*

In the district court of the United States, southern district of California.

THE UNITED STATES, appellants,
vs. No. 93.
JOSÉ LORETO SEPULVEDA, appellees.

On return of survey.

To the said appellees, or their attorneys:

You will take notice that the above cause will be brought on to a hearing before said court by said appellants, on the 5th day of March, A. D. 1861, at 11 o'clock a. m. of said day, or as soon thereafter as the same can be heard.

J. R. GITCHELL,
U. S. Dist. Att'y.

LOS ANGELES, *Feb'ry* 25, 1861.

Personally served the within upon Jonathan R. Scott, one of the attorneys in the within entitled, by delivering to him a true copy at Los Angeles county, State of California, this 26th day of February, A. D. 1861.

JAMES C. PENNIE, *U. S. Marshal.*
Per JAMES F. BURNS, *Deputy.*

Filed February 27th, 1861.

G. L. MIX, *Cl'k.*
Per JOHN O. WHEELER, *Dep'ty.*

82 Whereupon the following proceedings were had and done in open court:

Order of continuance and leave to take further testimony.

MONDAY, *March 4th, A. D.* 1861.

JOSÉ LORETO SEPULVEDA *et al.*, appellees,
ads.
THE UNITED STATES, appellants.
No. 93.

Ordered, that this cause be set for Monday, March 11th, A. D. 1861, and that the parties in the meantime have leave to take further testimony.

Order of continuance.

MONDAY, *March 11th, A. D.* 1861.

JOSÉ LORETO SEPULVEDA *et al.*
vs.
THE UNITED STATES.
No. 93.

Present parties in court. Whereupon, by consent, the hearing of this cause is continued until Monday the 18th March, A. D. 1861.

Order of continuance.

MONDAY, *March 18th, A. D.* 1861.

JOSÉ LORETO SEPULVEDA *et al.*, appellees,
ads.
THE UNITED STATES, appellants.
No. 93.

Now come the parties into court, this being the day heretofore set for trial of this cause. Whereupon the same is passed by the court until to-morrow, at 11 a. m.

83 *Agreement of continuance.*

TUESDAY, *March 19th,* 1861.

JOSÉ LORETO SEPULVEDA *et al.*, appellees,
ads.
THE UNITED STATES, appellants.
No. 93.

Present the respective parties by counsel, and cause, by agreement, passed until Friday next, March 22d, 1861.

Deposition of Juan Cota.

JOSÉ LORETO SEPULVEDA *et al.*, claimants and appellees,
vs.
THE UNITED STATES, appellants.
Case No. 93.

Deposition of Juan Cota, taken before G. L. Mix, United States commissioner for the district of California, at the United States court-house, in the city of Los Angeles, on Thursday, the 21st day of March, A. D. 1861, at 2 o'clock p. m. on said day, on behalf of the claimants and appellees, by the consent of parties, to be used as testimony in a certain cause now pending in the United States dist. court for the southern district of California, being case No. 93 on the docket of said court, wherein José Loreto Sepulveda *et al.* are appellees, and the United States, appellants.

Present, J. R. Scott, attorney in behalf of the appellees, and J. R. Gitchell, U. S. dist. att'y, in behalf of appellants. Evidence interpreted by W. G. Dryden, a sworn interpreter.

84 *Questions by J. R. Scott, att'y of claimants and appellees.*

Ques. What is your name, age, occupation, and place of residence?

Ans. My name is Juan Cota; aged 49 years; ranchero and herder of stock, and reside in San Pedro, Los Angeles county.

Ques. Do you know the rancho of Palos Verdes, if so, how long have you known the same?

Ans. I do know it, and have known it since the years 1835 or 1836.

Ques. Do you know any natural objects or landmarks on the boundaries of said rancho, if so, name them?

(*Objection.*—Question objected to on the grounds that it is incompetent for the claimants and appellees to prove any other boundary lines than those given and set forth in the decree of confirmation)

Ans. I do. In the first place, a lake of water upon the side towards the city of Los Angeles; upon the western boundary, there is a stake planted in the ground. Also, near some sand hills, there is a pile of rocks, a little beyond a place called the Salt Lake, near the sea. On the opposite side of the small mountain there is a place called the Codo, this Codo is formed by the sea running into the land, making an elbow. Down the coast further, and near the same, is a place called the Portrero de Demasio.

Ques. Look upon the official map on file in this case, and state whether or not you distinguish any of the natural landmarks as laid down upon said map.

Ans. I discover on the plat a place called El Codo, or the elbow. I find a great difference in looking upon the land and on the
85 map, but El Codo is at a place marked on the map J. O. W. 1, and at the point marked J. O. W. 2 is the point called Portrero de Demasio. The point marked J. O. W. 3 I recognize as point San Pedro, and point marked "government reserve" are situated the houses at old San Pedro. At the mouth of the estero is the place called "La Goleta." This estero is marked on the map "The inner bay of San Pedro." At the point marked J. O. W. 4 is the place called "La Goleta." At J. O. W. 5 is the place called "Sand hills, or pile of stones."

his
JUAN + COTA.
mark.

Witness: John O. Wheeler.

I, Gustavus L. Mix, of the city and county of Los Angeles, and State of California, commissioner to take affidavits and bail in civil cases pending in the courts of the United States, and depositions under the acts of Congress approved September 24th, A. D. 1789, February 20th, A. D. 1812, and March 1st, 1812, by virtue of my office of clerk of the United States court of the southern district of California, and by special appointment by the United States circuit court for the State and circuit of California, do hereby certify that the foregoing deposition of Juan Cota was taken before me, on the 21st day of March, A. D. 1861, according to the consent of the said parties at the United States district court-house, in the city of Los Angeles, and State of California, in behalf of the claimants and appellees. That the said Juan Cota was by me duly sworn according to law, as a witness in the said cause in the caption of this deposition mentioned, and after being so sworn his testimony was by me reduced to writing in his presence, and after having been by me carefully read to 86 him, and by him corrected in every particular as he desired, was by him signed in my presence.

In witness whereof, I hereunto set my hand and private seal, [L. S.] (having no seal of office,) this 21st day of March, A. D. 1861.

G. L. MIX,
United States Commissioner.

Filed this 21st March, 1861.

G. L. MIX, *Clerk.*

Trial of Cause.

FRIDAY, *March* 22, 1861.

JOSE LORETO SEPULVEDA *et al.*
vs.
THE UNITED STATES.
No. 93.

Now come the parties into court, by J. R. Scott, attorney for claimants, and J. R. Gitchell and Isaac Hartman, attorneys for the United States; this being the day set for trial of this cause, said Hartman, on motion of the United States district attorney being associated with him herein on the part of the United States. And the same being argued by counsel, is submitted, and by the court taken under advisement.

Stipulation to file brief.

MONDAY, *April* 1, 1861.

JOSE LORETO SEPULVEDA *et al.*
vs.
THE UNITED STATES.
No. 93.

It is hereby stipulated in open court that attorneys for claimants shall have until Saturday next to file brief herein, the same to 87 be served on United States district attorney on Wednesday, April 3, 1861.

Brief of claimants.

THE UNITED STATES
vs.
JOSÉ L. SEPULVEDA and JUAN SEPULVEDA.

No. 93.
Los Palos Verdes.
Exceptions to survey.

This is a motion to set aside the survey made by the surveyor general of the United States for California. It is submitted by the claimants that the survey is correct. The grant and confirmation is to the place called Palos Verdes. The survey gives as the place called Palos Verdes a tract of land in a compact, and approximating to a square form, with natural boundaries, to wit: On two sides by the rancho of San Pedro, and on other two sides by the Pacific ocean and the bay of San Pedro. To give any less than this would be to divide this tract and give to claimants a fraction less than one-half of the tract as set forth in the survey; thus dividing the entire tract, without any natural landmarks for such division. It is submitted, therefore, that the presumption is that the entire place was called Palos Verdes, as there is no proof, nor any attempt made to prove, that any part of the tract was ever known or called by any other name. And it is submitted that all experience has shown that all grants in California are bounded by natural boundaries. The decree in this case, it is submitted, is somewhat carelessly and inartificially drawn, but enough can be gathered from the decree and surrounding circumstances to gather what was meant as Palos Verdes.

The point called the Sand Hills is a well established and undisputed
point. The judicial possession declares that from thence to
88 El Codo is 5,300 varas, this, unquestionably, is a clerical error,
as the distance is actually much greater, to wit:

It is submitted that the point called El Codo has been well established by the testimony of Juan Cota as a well-known point, and it therefore becomes entirely immaterial whether the judicial possession reads 5, or 50,000 varas, as the *place* itself must govern.—(6 Wheaton, 580; 7 Wheaton, 7.) The witness, Cota, also recognizes another point, not named on the map, between El Codo and the government reserve, to wit: as one of the landmarks of the place called Palos Verdes.

The government reserve of 500 varas square is not included in the limits granted, but is specially reserved therefrom. The distance from El Codo, as located on the map, from and to the place called La Goleta, by the meanderings of the coast, varies but a fraction from the distance as laid down in the act of judicial possession between these two points.

It is therefore submitted that the government reserve would never have been mentioned in the grant, were the propositions claimed on the part of the government could as, to run a line from No. 21, where it is claimed by the district attorney that El Codo should be located to the place called La Goleta, would, at the nearest point, be a distance of more than one and one-half miles from the said reserve, as measurement upon the map will show.

The government reserve is clearly moved, and thus claimants

establish four distinct points upon the sea shore, and about which there is no conflicting testimony, 1st, the sand hills; 2d, El
89 Codo; 3d, Portrendo, and 4th, the government reserve; three of which are mentioned in the act of judicial possession and the decree of confirmation in this case. It is submitted that it would be a strange proposition to save and reserve out of a tract of land 500 varas square, at a location which is proved and established, where, in fact, the tract of land granted did not, at the nearest point, come within a mile and a half of the place reserved.

It is submitted that, in fixing a survey, the court is to be governed by the land granted, and to disregard any technical imperfections of boundaries.

In this case the proof is clear and uncontradicted, that this entire tract of land, as embraced in the map, has always been known as the place called Palos Verdes, and that the survey is correct and should be affirmed.

It is submitted that the calls of the grant can be met in no other way than that approved by the surveyor general.

SCOTT & DROWN,
Att'y for Claimants.

Filed April 8, 1861.

G. L. MIX, *Cl'k.*
Per JOHN O. WHEELER, *Dep'ty.*

Brief of Appellants.

THE UNITED STATES
vs.
JOSÉ L. SEPULVEDA *et al.*
} No. 93.—"Los Palos Verdes."

On the tenth day of December, A. D. 1858, this cause was originally submitted to his honor the United States dist. judge for
90 the southern district of California, whereupon a decree was rendered confirming to the claimants the place known as the Palos Verdes by metes and bounds, a portion of said decree is in the words following, to wit: "The land, of which confirmation is hereby made, is that known by the name of Los Palos Verdes, situated in the county of Los Angeles, and is bounded and described as follows: beginning at the southeast point of the place called 'Los Palos Verdes,' at a place called La Goleta, where there is a landmark, and running thence in a northerly direction eight thousand varas; thence in a westerly course twelve thousand varas, to some sand hills on the edge of the beach, where there is a landmark; thence running south five thousand three hundred varas to a point on the beach called El Codo; thence in an easterly course, leaving a reserve of five hundred varas on each one of the four cardinal points, fifteen thousand varas to the place of beginning;" for further description reference is made to the grant and act of judicial possession.

Upon said decree the surveyor general of the United States for the

State of California caused to be made and afterwards approved the plat of said premises now returned into court.

And said survey is now returned into court for final adjudication upon application made by the government, that the same is not in conformity with the decree of this court, under the law of the 14th June, 1861, and the rules of this court adopted under said law. Upon the return of said survey, the following lines were excepted to, to wit: all those lines from station 21 on said plat, following the coast to the La Goleta, or place of beginning.

91 Under this state of the case, it is submitted that the only question now before the court is, whether the approved survey returned into court is in conformity with the decree heretofore rendered in this cause.—(U. S. Statutes, vol. 9, page 633, sec. 13; U. S. Statutes, vol. 12, page 33, sec. 1; also, 2d rule of this court relative to the return of land surveys.)

The law of the 4th of March, 1851, requires that the surveyor general shall cause to be made an accurate survey of all private land claims in the State of California, after the final confirmation of the same by the courts.

That survey can alone be based upon the final decree, and the papers therein referred to; upon these and only these can he act. To permit him to take the original grant and construe the same according to his own judgment in running the boundary lines of any rancho would virtually render the whole proceedings had before the United States board of land commissioners, before this court, and before the Supreme Court of the United States, an useless ceremony—needlessly presented to the surveyor general to be acted upon by him only so far as it meets with his approbation.

The law of 1860, June 14th, page 33, sec. 1st, requires of the surveyor general, when he shall have caused a survey to be made in compliance with the 13 sec. of the law of 1851, (the sections above referred to,) to give notice thereof by publication, &c., and the 4th section of the same law gives the court power to set aside said survey or correct and modify the same. Under the rules of this court, adopted in conformity with the law of the 14th June, 1860, we find that to procure a return of a survey the first requisite is a statement in writing, suggesting that said survey is not in conformity with
92 the decree of the court, (Rule No. 2,)—not that it does not conform to the grant, diseño, juridical possession, or any other paper, but solely to the decree of the court.

If through carelessness, ignorance, or any other cause, the parties have mistaken their lines and caused to be entered an erroneous decree, (which we claim is not so in this cause,) they have their remedy by another and different action, but they cannot change said decree upon order for return of survey.

The admission of claimants in their brief, that "the decree is somewhat carelessly and inartificially drawn" is to some extent an admission that the decree will not include all the lands surveyed, and virtually asking of the court to set aside in this collateral manner its former decree, and enter a new one for their benefit.

The decree in this case is specific; it calls for the place known as

the Palos Verdes, with fixed metes and bounds, and for further description it refers to the grant and act of judicial possession. From the grant itself nothing can be learned, further than it is for the place called Palos Verdes, the lines of which are to be fixed by the officer giving possession. The act of judicial possession, which by the words of the decree is made a part of the same, gives specific boundaries, and these are precisely the same as those set out in the decree, with the exception that the commencing point, named in the act of judicial possession, is the second point named in the decree; they, however, both call for the same specific lines of boundary, and from all that appears in the records of this court, and in the testimony taken in this cause, the lines called for in the judicial possession
93 and the decree embrace the entire tract of land known as the Palos Verdes—no attempt is made to prove that it extended over a single acre of land outside of these boundaries. Upon a careful comparison of the approved survey now on file in this court, with the final decree, and the act of judicial possession referred to therein, said survey will be found in perfect conformity with the decree, from the point of beginning to station No. 21, on said plat. The decree and survey both call for the "La Goleta" as a commencing point, from thence north eight thousand varas, thence westerly twelve thousand varas to some sand hills, thence south five thousand three hundred varas to a point called the El Codo; thus far the decree and survey are in perfect conformity, for the survey shows a point or El Codo, the same distance south of the sand hills, that is called for in the decree.

From this point is found the error in the survey complained of by the government; both the decree of this court and the act of judicial possession calls for a line from this point in an easterly direction fifteen thousand varas to the place of beginning; whilst the survey shows a detour first south, then east, and ultimately north of thirty-nine thousand four hundred and ninety-three varas to reach said point of beginning, embracing a large tract of valuable land excluded by the decree of this court.

That plat of survey shows that there are numerous points or elbows along this coast, and no testimony was introduced by claimants to designate any particular one, as the El Codo referred to in the decree, except that of Juan Cota, and he does not appear to have been
94 present at the time judicial possession was given, or to have any knowledge thereof. He describes an El Codo as an arm of the sea, extending into the land, and afterwards designates a point of land extending into the sea as the El Codo.

It is submitted to the court that there is found, in conformity with its decree, a point or elbow five thousand three hundred varas southerly from the sand hills, (which said sand hills are admitted to be a corner,) and that this point or elbow is clearly marked by the surveyor on his plat.

That this is the point or elbow called for in the decree of this court, and the act of judicial possession is evident, from the following reasons: 1st. That in measurement it is the distance called for from the sand hills. 2nd. That in a direct line from this point to the place of begin-

ning it approximates closely to the number of varas called for both in the decree and act of judicial possession, thus closing the entire tract in perfect conformity with the decree of this court. 3rd. That was any other point upon the coast taken as the particular elbow referred to, both in the decree and juridical possession, it devolved upon the claimants to show the same, particularly as Leonardo Cota, the officer who gave juridical possession, was in this court as a juror nearly every day for two weeks previous to the submission of this cause. 4th. That the decree and juridical possession calls for the La Goleta as the southeast point of the place called Las Palos Verdes, and adopting
95 any other than a direct line from this point would place the southeast point of said ranch distant near two miles from the La Goleta.

The assertion in claimant's brief, that the distance called for between the sand hills and the El Codo is a clerical error, is, to say the least, inconsistent with reason and the plain dictates of common sense. It is fixed, by actual measurement, first, in the act of juridical possession; and second, by the surveyor general of the United States for the State of California, as shown by his plat returned into this court.

It is then from this point of land or elbow five thousand three hundred varas south of the sand hills, that error has evidently been made by the surveyor general. The decree calls for an easterly line from this place or point to the place of beginning, fifteen thousand varas in length, excluding five hundred varas square as a government reserve.

The testimony of E. Hadley and D. McLaren, both surveyors and experts, shows that the distance from this point to the place of beginning, in a direct line, is less than sixteen thousand varas, whilst the line in the approved survey is thirty-nine thousand four hundred and ninety-three varas.

Take, then, the direct line, and exclude therefrom the five hundred varas square as a government reserve, and we have the quantity, (differing but a few varas,) called for in the decree of this court, and in the act of juridical possession, clearly establishing that it was the line of which juridical possession was originally given, and marked the exterior limits of the place called Palos Verdes, and the same line called for in the final decree of this court.

96 Again, Hadley says in his testimony that the line excepted to was run by him, but not in conformity with the decree or any other order or paper issuing from this court, but that he ran the entire coast line upon the mere order of H. Hancock, a deputy United States surveyor.

It is contended by claimants that the government reserve is located upon the sea coast, some mile and a half distant from the direct line claimed by the government, and certain would not have been mentioned had it not been the intention of the decree to follow the sea coast—admitting that the reserve is upon the coast, and distant from the direct line claimed by the government. Yet there is no proof in this case that the officer giving juridical possession knew of its location, or that he did not reserve the five hundred varas square at the termination of the direct line upon the bay near the La Goleta. This latter view we hold to be correct, as we find the direct line exceeding the quantity called for by about the amount reserved. In this view we are sustained by the claimants in their brief; on the third page of the same they tacitly admit that their decree is insufficient to embrace the lands included within this survey, but ask of the court to "disregard description and be governed by the grant." Overlook the decree with fixed boundaries, and take grant which is without boundaries named—in other words, set aside the final decree of the court and permit them to file a new one in these collateral proceedings.

97 It is then submitted that the survey returned into court is erroneous so far as excepted to by the government, and that the same should be so far corrected or modified as to direct a straight line to be surveyed from station No. 21 on said survey in an easterly direction to the place of beginning the La Goleta, in conformity with the final decree of this court.

J. R. GITCHELL,
U. S. District Att'y.

Filed April 8, 1861.

G. L. MIX, *Clerk*,
Per JOHN O. WHEELER, *Deputy*.

Judgment affirming exceptions.

TUESDAY, *April* 9, A. D. 1861.

Present, Honorable I. S. K. Ogier, judge.

JOSÉ LORETO SEPULVEDA, *et al.*, appellees, *vs.* THE UNITED STATES, appellant.	No. 93. Return of survey.

Now come the parties into court by their respective attorneys—J. R. Scott and E. Drown, for claimants, and J. R. Gitchell, U. S. Dist. Att'y, and J. Hartman on behalf of the United States, and this cause having been heretofore argued and submitted, the court renders judgment affirming the exceptions filed in this cause, and modifying said survey of the Surveyor General of the United States for the State of California, now on file in this court, and ordering a decree to be drawn up in accordance with the opinion rendered herein.

98 *Decree signed and filed.*

THURSDAY, *April* 11, A. D. 1861.

Present: Hon. I. S. K. Ogier, judge.

JOSÉ LORETO SEPULVEDA, *et al.*, appellees, *ads.* THE UNITED STATES, appellants.	No. 93.

Now come the parties into court, whereupon appellees, by their attorneys, present to the court a decree, in accordance with decision heretofore made, which is signed by the court and placed on file.

Order for the transmission of plat to surveyor general.

On motion of Scott & Drown, attorneys for appellees, it is ordered that the plat of survey on file in this case, and excepted to, be remanded from the files of this court and returned to the surveyor general, together with a certified copy of the decree of this court ordering a resurvey as well as a certified copy of this order.

Decree.

In the district court of the United States for the southern district of California.

THE UNITED STATES, appellant, *ads.* JOSÉ LORETO SEPULVEDA, *et al.*, appellees.	No. 93. "Palos Verdes." On return of survey.

99 And now comes on this cause to be heard upon the exceptions heretofore filed on the part of the United States to the survey of the surveyor general of the United States for the State of California, and the same having been argued by counsel, and having been understood by the court, the court finds that there is error in a portion of the lines excepted to on the part of the United States, to wit: From the point marked "sand hills," on the beach, to the point marked "El Codo," also situated on the beach, and from the point last aforesaid to the point on the beach marked "the government reserve."

It is therefore ordered adjudged, and decreed that the said survey be, and hereby is, vacated as follows: From the point marked "sand hills," on the beach, to the point on the beach marked "El Codo," and from the point last aforesaid to the point on the beach marked "the government reserve." And it is ordered, adjudged, and decreed that a new survey thereof be made by the surveyor general of the United States for the State of California, as follows: Commencing at the said "sand hills," on the beach, and from thence running a direct line to the place called "El Codo;" said last mentioned point to be ascertained and fixed by the said surveyor general; and from thence running in a direct line to the southwest corner of "the government reserve," as marked on said map in this cause. And it is further ordered, adjudged, and decreed that all of the use of the lines of the said survey, as appear by the said map in this cause, be, and the same are hereby, confirmed.

100 Thus done and signed in open court this 11th April, 1861.

ISAAC S. K. OGIER,
U. S. Dist. Judge.

Filed April 11, 1861.

G. L. MIX, *Clerk*,
Per JOHN O. WHEELER, *Deputy*.

Order of appeal on behalf of appellants.

MONDAY, *April* 15, 1861.

Present: Hon. I. S. K. Ogier.

JOSE LORETO SEPULDEVA, *et al.*, appellees,
vs.
THE UNITED STATES, appellant. } No. 93.

In the matter of exceptions to survey. On motion of J. R. Gitchell, U. S. district attorney for the southern district of California:

It is ordered, that an appeal be granted to the Supreme Court of the United States from the decree of this court, correcting the survey of the surveyor general of the United States for the State of California, heretofore returned in this case.

Order of appeal on behalf of appellees.

JOSE LORETO SEPULVEDA, *et al.*, appellees,
vs.
101 THE UNITED STATES, appellants. } No. 93.—"Palos Verdes."

On motion of Scott & Drown, attorneys for claimants, it is ordered that an appeal be, and is, hereby allowed to them to the Supreme Court of the United States from the order and decree of this court, made April 11th, 1861, correcting the survey of the lands claimed in this case, made and filed heretofore by the United States surveyor general for the State of California, and ordering a resurvey of said lands, and the claimants filing a bond in form as prescribed by law, with sufficient securities, to be approved by this court or judge thereof, in the sum of two hundred dollars.

102 UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF CALIFORNIA,
Clerk's office. Los Angeles.

I, Gustavus L. Mix, clerk of the district court of the United States in and for the southern district of California, do hereby certify the foregoing 101 pages, numbering from one to one hundred and one, both inclusive, contain a full, true, and correct transcript of the records of the proceedings, and of the decision of said court, and the papers and evidence on which said decision was founded, on file in my office in case No. 93, on the docket of said court, wherein Jose Loreto and Juan Sepulveda are appellees, and the United States is the appellant, for the place called "Los Palos Verdes."

In testimony whereof, I have hereunto set my hand and [L. S.] affixed the seal of said court at the city of Los Angeles, California, this third day of December, A. D. 1861.

GUSTAVUS L. MIX, *Clerk.*

SUPREME COURT OF UNITED STATES.

No. 178.—December Term, 1862.

THE UNITED STATES, APPELLANTS,
vs.
JOSÉ LORETO SEPULVEDA ET AL.

BRIEF FOR THE UNITED STATES.

SUPREME COURT OF UNITED STATES.

No. 178.—December Term, 1862.

THE UNITED STATES, APPELLANTS,

vs.

JOSÉ LORETO SEPULVEDA ET AL.

BRIEF FOR THE UNITED STATES.

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SUPREME COURT OF UNITED STATES.

No. 178.—December Term, 1862.

THE UNITED STATES, APPELLANTS,

vs.

JOSÉ LORETO SEPULVEDA ET AL.

BRIEF FOR THE UNITED STATES.

IN SUPREME COURT OF UNITED STATES.

No. 178.—DECEMBER TERM, 1862.

THE UNITED STATES, appellants,
vs.
JOSÉ LORETO SEPULVEDA *et al.*
} On appeal.

BRIEF FOR THE UNITED STATES.

STATEMENT OF FACTS.

The only questions presented by this record relate, 1st, to the *correctness of the survey* made by the surveyor general of California of the ranch called "Los Palos Verdes," under the final decree of confirmation; and, 2d, to the correctness of *the decree* of the District court in *modifying* the survey.

The decree of final confirmation, omitting the formal parts, was as follows, viz:

"The land of which confirmation is hereby made is that known by the name of "*Los Palos Verdes,*" situated in the county of Los Angeles, and is bounded and described as follows: Beginning at the southeast point of the place Los Palos Verdes, at a place called La Goleta, where there is a landmark, and running in a northerly direction, eight thousand varas; thence, running in a westerly course, twelve thousand varas, to some sand hills on the edge of the beach, where there is a land mark; thence, running south, five thousand three hundred varas, to a point on the beach called El Codo; thence, running on an easterly course, leaving a reserve of five hundred varas on each one of the four cardinal points, fifteen thousand varas, to the place of beginning. Reference being had for further description to the grant of said land made by Pio Pico, dated June 3, 1846, to said José Loreto Sepulveda and Juan Sepulveda, and to the act of judicial possession of said lands, made to Leonardo Cota, first alcalde, and dated June 11, 1846, which said grant and act of judicial possession are filed in this case: provided that, if there be more than eleven square leagues within said boundaries, then confirmation is only made to that extent; but if the quantity of land contained in said boundaries be less than eleven square leagues, then confirmation is hereby made for such less quantity."—*(Printed Record, p. 24.)*

The survey of the ranch, under this decree, was that represented by the plat.

The United States excepted to the survey, on the ground that it was *not in conformity* to the decree of confirmation, and included *about double* the quantity included within the lines of the decree. The United States contended, *in effect*, (and this view of the case is very strongly presented in their behalf by the brief of the United States district attorney accompanying the record, *Record, p.* 46-50,) that the decree was for a *fixed quantity* of land, bounded by *fixed measurements* rather than by *fixed boundaries;* in other words, that it was a confirmation by *metes* rather than by *bounds.*

On the contrary, it was contended by the claimant that it was a decree for land whose quantity is to be determined by the *locality* of *natural boundaries* rather than by *fixed measurements*; that the confirmation was by *bounds* rather than by *metes.*

The District court took a *middle view*, sustaining neither of these theories, and, with the usual success in such cases, has satisfied neither party. Both parties appealed. But the appeal now under consideration is *that* prosecuted by the United States.

The decree appealed from, omitting the formal parts, is as follows:

"It is therefore ordered, adjudged, and decreed that the said survey be, and hereby is, vacated, as follows: From the point marked 'sand hills' on the beach to the point on the beach marked 'El Codo,' and from the point last aforesaid to the point on the beach marked 'the government reserve.' And it is ordered, adjudged, and decreed that a new survey thereof be made by the surveyor general of the United States for the State of California, as follows: Commencing at the said 'sand hills' on the beach, and from thence running a *direct line* to the place called 'El Codo,' said last-mentioned point to be ascertained and fixed by the said surveyor general; and from thence running in a *direct line* to *the southwest corner of the* '*government reserve,*' as marked in said map in this cause. And it is further ordered, adjudged, and decreed, that all the use [rest?] of the lines of the said survey, as appears by the said map in this cause, be, and the same are hereby, confirmed."—(*Printed Record, p.* 51.)

ARGUMENT FOR THE UNITED STATES.

This case presents only a *choice* of difficulties. There are *three* views of the mode in which the survey ought to be made under the decree of confirmation:

1st, that of the surveyor general, represented by the plat; 2d, that of the District court; and, 3d, that contended for by the United States.

Neither of these views, nor any other which can be presented, is entirely free from difficulty.

The only principles which can be laid down to guide the action of the court in this case are these:

1. That the confirmation is one by *metes* rather than by *bounds.*

This is evident from an examination of the whole case:

1st. From the petitions: The claim is for *no specific quantity* of land, either in the petition to the Mexican authorities (*Record, p.* 7) or to the land commission.—(*Record, p.* 2.) It is simply for the tract

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of land called "Los Palos Verdes," according to a plan *not furnished;* "and that the *size* and *extension* be assigned *according to what we possess.*"—(*Record, p.* 7.) The *size* and *extension* of the tract *possessed* were *facts* to be ascertained.

2d. It is evident from the act of *judicial measurement* and delivery of possession.—(*Record, p.* 12.) The claim derived its *individuality*—*its locality*—solely from the *measurement* made at the time judicial possession was given. Without this the claim had "*a name,*" but it had *no* "*local habitation.*"

3d. It is evident from the decree of confirmation itself, which substantially follows the record of the *judicial measurement.*—(*Record, p.* 12, 24.) The length of every line is determined and fixed by *measurement.* The reference to *natural boundaries* is only *incidental* to the *description by measurement.* It may, therefore, be assumed as a principle, that the grant and confirmation in this case are of a tract of land whose quantity is to be determined by *measurements* and *not* by *natural boundaries.*

2. The second principle to be adopted as a guide by the court is a *consequence* of the first, viz: that in any case of *conflict* between metes and bounds, under this decree, *metes* must prevail over *bounds,* as being *more certain.*

3. The third principle is, that in the *necessary* choice of difficulties presented by this case, *that view* shall be adopted which is attended with the *fewest* difficulties. 22 Howard's R., 226, furnishes an illustration of this principle.

In the light of these principles let us examine the three several views before enumerated, as to the true method of survey required by the decree of confirmation:

I. That of the surveyor general. In regard to this we contend that it must be rejected for the following reasons: 1st. Because, in point of *fact,* the survey of the lines in dispute, viz: the *western* and *southern,* was *not made in execution of the decree of confirmation,* but merely in obedience to a general order to survey *the coast line, from the Sand Hills to Captain Ord's Wells.* The testimony of the surveyor who made this part of the survey is specific on this point: "That in making such survey he had neither the decree of this (District) court nor any other paper giving a description of *said rancho* before him, but that he solely followed the verbal directions given him by said Handcock, in running the lines aforesaid."—(*See Hadley's test., Record, p.* 28, 40.)

2d. It must be rejected, because it is made *contrary* to the requirements of the decree, as appears by the testimony of *three professional experts,* Leighton, McLaren, and Hadley, (*Record, p.* 37–40;) and by the judgment of the District court in vacating the *western* and *southern* lines of the survey.—(*Record, p.* 51.)

3d. Because it makes "San Pedro *Point*" *the southeast corner* of the ranch, *contrary* to the *express terms* of the decree, which makes "La Galeta" "*the southeast corner.*"

4th. Because it makes the *western* line more than *four times* as long as that called for by the decree—the distance called for being 5,300 varas, and the line surveyed being 21,541.72 varas.

5th. Because the *southern* line, instead of running "*easterly*," as called for by the decree, runs first *southeasterly* and then *northerly*, and is nearly 3,000 varas longer than that called for by the decree. The southern line is required to be 15,000 varas long by the decree. By the survey, in addition to the objections named in *point of direction*, it is $17{,}951\frac{6}{10}$ varas.—(See testimony of surveyors, *Record*, *p.* 34, 38.) This error is the consequence of the two previous ones, first, in *lengthening* the western line, and, second, in making San Pedro Point the southeast corner, instead of La Galeta, as called for by the decree.

6th. Because it violates the principles laid down at the outset of the argument.

This view, therefore, may be laid out of the case. It has been examined only because it may be contended for by the claimant in resisting the appeal by the United States, and because its examination will assist in disposing of the second view.

II. That of the district court. This view, also, must be rejected.

1st. Because, departing from the *evident intention* of the grant, it orders *direct* lines to be run from and to the points marked in the survey as the "Sand Hills" and the "El Codo," two points on the *coast line*, thereby abandoning the *natural boundary* furnished by the coast, and thereby *interposing*, at the same time, a long and narrow strip of land between the artificial line thus made and the natural boundary.

2d. Because, in violation of the *express terms* of the decree, it makes the *southwest corner* of the *reserve*, as laid down upon the plat, the *southeast corner of the ranch*, *instead of* "*La Galeta*," and because the south line does not terminate at the place of beginning, as called for by the decree.

3d. Because it disregards *the fundamental character* of the decree of confirmation, and instead of a confirmation by *metes* rather than by bounds, it makes it a confirmation by *bounds* rather than by metes; and, in consequence thereof, makes the *western line* at least *three* times as long by measurement as the line called for by the decree.

4th. Because it is *inconsistent* with itself, as a survey by *bounds*, abandoning "La Galeta," while adhering to "El Codo," the effect in both cases being to *increase* the quantity of land in favor of the claimant.

5th. Because the court failed to exercise its established power to determine the location of the "El Codo" called for by the grant. The decree merely uses the language of the act of judicial measurement, and leaves the *location* of that *disputed* point and the *identification* of the natural object called for to be determined by the surveyor general. This was erroneous.—(*Fossat's case*, 1 *Hoffman's Reports Land Cases*, *p.* 212, *&c.; same case*, 21 *Howard's U. S. R.*, *p.* 447, 449–451.) In that case the District court, with the approval of this court, determined *which* of the two disputed ranges of hills answered the call for "the sierra" on the south, and did not leave it for the surveyor general, as was done in this case. The court should have determined which was the "El Codo" called for by the grant, or the principles by which it was to be ascertained—*locality or measurement.*

For these reasons, therefore, this view must be rejected, and the decree reversed.

III. The only remaining view is that of the United States, which must be adopted by the court for the following reasons, viz:

1st. Because it is in harmony with the *fundamental character* of the decree of confirmation, as a confirmation by *metes* rather than by *bounds.*

2d. Because the lines of the survey as it ought to be, and as claimed by the United States, are *substantially* accordant with the length of the lines fixed by the decree of confirmation.

3d. Because it *preserves* and *makes* "La Galeta" the southeast corner of the ranch, as is required by the express terms of the decree of confirmation.

4th. Because it preserves the coast line as the western boundary of the ranch to the extent of 5,300 varas, or, in other words, to the twenty-first station of the survey, or thereabouts, and thereby *avoids* the objections made on that line to the decree of the District court.

5th. Because it meets fully the requisitions of the three principles laid down to guide the action of the court in determining the questions involved: 1st, it proceeds on the basis that the confirmation is by metes, rather than fixed bounds; 2d, that in the case of a conflict between metes and bounds in the execution of the decree, metes must prevail over and fix bounds; and, 3d, in its execution, as well theoretically as practically, it encounters fewer difficulties than any other view. This will be evident from an examination of the only difficulties which present themselves against it.

1st. It may be contended that "El Codo" is a *fixed point* on the coast, and that, therefore, the *western line* must be *extended* to it, *regardless* of the excess of *three to one* in the length of the line thus made. But the answer to this objection is, that all the other lines and corners are determined by distance, and are found substantially to agree with the measurements of the decree. Discrepancy is found to exist only in regard to the *southwest* corner. This fact leads necessarily to one of two conclusions: 1st, either that there must have been *two* or more points on the coast known as "El Codo," or, 2d, that if there was only one, it was mentioned by *mistake* in regard to its distance.

It is somewhat remarkable that the claimant, who called Leonardo Cotta in support of his claim *before* the decree, *did not* call him *after* the decree in support of the survey of the surveyor general, although he was living, and within call, serving as a juror, at the time when the question was pending in court.—(*Record, p.* 49.) He, as the judicial officer who made the measurements and gave judicial possession of the land, certainly knew more about the matter in dispute than any other man living. Instead of calling him, an illiterate herdsman, who had not been present at the judicial measurement, and who had no special knowledge on that or any other subject, was called. Now, why was Leonardo Cotta not called? His evidence was the best the nature of the case admitted, and it was within reach. If his testimony would have supported the theory of the claimant, there can be no doubt but that he would have been called. This fact—that he was not called—is evidence, therefore, *against* the claim made. When the best evidence is not called, it is evidence of great weight against the claim.—(23 *Howard's R.*, 282.) The only rational explanation of the fact is that Cotta was placed in the dilemma of committing *perjury* if he supported the claimant's pretensions, or of being convicted of a *mismeasurement* so *gross* as to amount to *fraud* upon the government; and either situation was not pleasant. It was *wiser* and *safer*, therefore, *not* to call the judicial officer, but to maintain the pretension by the vague and indefinite testimony of an ignorant witness, who had *no special* knowledge on the subject.

That a measurement was *actually made* in the case at the time judicial possession was given is evident from the fact that the distances in the judicial measurement agree substantially with those claimed by the United States and determined by the survey, except in the single case of the location of El Codo, and the errors consequent upon that location. The inference, therefore, is that there must have been *a place* at the distance of 5,300 varas from the sand hills known as "*El Codo*," or as *a* "*codo*"—that is, a *promontory* or *elbow*. The survey itself shows *an elbow* at or near that point, meeting substantially the requirements of the judicial survey and of the order of confirmation.

That the "El Codo" contended for by the claimant is *not the point* intended by the judicial measurement is proved by the fact that if an *actual measurement* was made, no reasonable allowance for error and imperfection in the measurement could place it at *four times* the distance specified in the report of the measurement.

In this case of a conflict between metes and bounds, therefore, it is evident that the *distance* must govern, as being *the more certain*, supported as it is by numerous other facts in the case.

2d. The only other difficulty is that arising from the apparent reservation of a tract, 500 varas square, at the old port of San Pedro, from within the limits of the tract, within which it is not included.

But this difficulty is more *apparent* than *real*. It is true the *grant* (conditions 3 and 4—*Record*, *p.* 10) appears to make a reservation in behalf of the site of *Old San Pedro*. But the act of judicial measurement (*Record*, *p.* 12) and the decree of confirmation (*Ib.*, *p.* 24) do not locate the reserve of 500 varas square *at* Old San Pedro. It is located *somewhere* on the southern line, running in an *easterly* direction; but there is nothing to show that it was *at* San Pedro, or that San Pedro would fall within the tract measured, and of which judicial possession was given. If there is any obscurity here, it is not the fault of the United States. It is the misfortune of the party, arising, possibly, from the loss or non-production of the diseño or plan which accompanied the petition and grant. It may be, however, (and from the evidence in the case that is the only rational conclusion,) that the reservation was made merely *out of abundant caution, lest it might be included.* The petition being for a tract of land called "Los Palos Verdes," with *indefinite* boundaries, accompanied by a plan showing the old port of San Pedro, and asking that the size and extension of the tract might be assigned according to *what was possessed* by the petitioner, (see *Record, p.* 7,) it was wise, and apparently necessary, that such a reservation should be made. When the judicial measurement came to be made, the size and extent of the possession shown was found *not to include the port of San Pedro.* Certain it is there is nothing to show that it did. But inasmuch as the grant called for a reserve, a reserve was made and located *somewhere* on the southern line.

But for the fact, that the act of judicial measurement and the decree both call for a reserve, it might very reasonably be contended that *none* ought to have been made, when it was found that San Pedro did not fall within the limits of the grant. But inasmuch as the final decree calls for the reserve, the United States are entitled to a reserve on the southern line.

The legal aspect of this branch of the case, then, is *that* of an *express exception* of a thing supposed to be *included*, but subsequently ascertained *not* to be included, in the grant. In such a case, *the exception is void*, and is to be treated as if it had not existed. The law on this point is old and well settled.

An exception of a thing not included in a grant is void.—(1 *Sheppard's Touchstone, pp.* 78–79, *in* 30 *Law Library.*) One of the examples given is this: "As, if one grant a manor, *excepting one acre* of ground, which is no part of the manor." This is only an exclusion *by terms*, instead of *by construction.*—(*Perkins, sec.* 639 ; *Dyer*, 59 ; *Plowden*, 361, 67, 370.) This is also the *spirit* of the maxim, "Expressio eorum qui *tacite insunt*, nihil operatur." The expression of those things which the law tacitly implies, works nothing.—(*Broom's Legal Maxims, p.* 286.) The reverse, as we have seen, is equally true. The *expressed exclusion* of those things which the *law* or the *fact tacitly excludes*, works nothing. These objections, therefore, are not solid; and as the view of the survey contended for by the United States is attended with the *fewest* difficulties upon the principles before laid down, it is the one which must be adopted by the Supreme Court as most in conformity with the decree of confirmation. The conclusion therefore is, that the decree of the District court must be reversed, and a decree entered by the Supreme Court confirming the survey of the western line as far as *the point* or "*Codo,*" at or near station No. 21, at the distance of 5,300 varas from the "Sand Hills," and running thence easterly to La Galeta, described as "the place of beginning" in the decree of confirmation, reserving to the United States, at or near that point, a tract of land 500 varas square, the east side thereof fronting on the bay of San Pedro.

The court will have the less difficulty in giving this *restrictive construction* to the limits of the grant contended for by the United States, from this fact: that an inspection of the record will show that if the appeal originally taken by the United States to the decree of confirmation in this case had not been *improvidently* dismissed by Mr. Attorney General Cushing, in Washington, February 9, 1857, more than five years ago, (and what is a little remarkable, *even before the appeal had been allowed in California*, for it was not allowed by the District court until February 24, 1857, *see Printed Record, p.* 24,) the whole claim, under the doctrine now established by this court, must have been rejected.

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